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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JACQUELINE SCOTT CORLEY, MAGISTRATE JUDGE

WAYMO LLC,

PLAINTIFF,

VS. NO. C 17-00939 WHA (JSC)

UBER TECHNOLOGIES, INC;

OTTO TRUCKING LLC;

AND OTTOMOTTO LLC,

**DEFENDANTS.**

SAN FRANCISCO, CALIFORNIA  
MONDAY, OCTOBER 23, 2017

# **TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

**FOR PLAINTIFF:**

QUINN, EMANUEL, URQUHART & SULLIVAN LLP  
50 CALIFORNIA STREET - 22ND FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

**BY: JAMES E. BAKER  
DAVID A. PERLSON  
JORDAN ROSS JAFFE  
MELISSA J. BAILY  
JAMES DUBOIS JUDAH  
JEFFREY W. NARDINELLI  
ANDREA ROBERTS  
ATTORNEYS AT LAW**

FURTHER APPEARANCES ON NEXT PAGE

1 FURTHER APPEARANCES:

2 FOR DEFENDANTS:

3 MORRISON & FOERSTER LLP  
4 425 MARKET STREET  
5 SAN FRANCISCO, CA 94105

6 BY: ESTHER KIM CHANG  
ATTORNEY AT LAW

7 AND

8 MORRISON & FOERSTER LLP  
9 555 W. FIFTH STREET  
SUITE 3500  
LOS ANGELES, CALIFORNIA 90013-1024  
BY: SYLVIA RIVERA  
ATTORNEY AT LAW

10 AND

11 FOR DEFENDANT OTTO TRUCKING LLC:

12 GOODWIN PROCTER, LLC  
13 THREE EMBARCADERO CENTER  
SAN FRANCISCO, CALIFORNIA 94111  
14 BY: BRETT SCHUMAN  
ATTORNEY AT LAW

16 GOODWIN PROCTER, LLC  
17 135 COMMONWEALTH DRIVE  
MENLO PARK, CALIFORNIA 94025  
18 BY: JAMES LIN  
ATTORNEY AT LAW

19 AND FOR STROZ FRIEDBERG, LLC:  
LATHAM AND WATKINS, LLP  
20 505 MONTGOMERY STREET, SUITE 2000  
SAN FRANCISCO, CALIFORNIA 94111  
21 BY: WHITNEY WEBER  
ATTORNEY AT LAW

22 FURTHER APPEARANCES, NEXT PAGE

23 REPORTED BY: KATHERINE WYATT, CSR #9866 RPR , RMR,  
PRO TEM COURT REPORTER

24

25

1 SPECIAL MASTER:  
2 FARELLA, BRAUN & MARTEL LLP  
3 RUSS BUILDING  
4 235 MONTGOMERY STREET, 18TH FLR  
5 SAN FRANCISCO, CALIFORNIA 94104  
6  
7 BY: JOHN L. COOPER  
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1 **MONDAY - OCTOBER 23, 2017**

**2:00 P.M.**

2 **PROCEEDINGS**

3 **---000---**

4 **THE CLERK:** CALLING CIVIL C17-0939, WAYMO VERSUS  
5 UBER.

6 **MR. SCHUMAN:** GOOD AFTERNOON, YOUR HONOR.

7 **THE COURT:** ALL RIGHT. LET'S START WITH WAYMO. GO  
8 AHEAD, AND MAKE YOUR APPEARANCES.

9 **MR. PERLSON:** GOOD AFTERNOON, YOUR HONOR. DAVID  
10 PERLSON FROM QUINN EMANUEL ON BEHALF OF WAYMO. WITH ME, JAMES  
11 BAKER, ANDREA ROBERTS, JEFF NARDINELLI, JORDAN JAFFE AND JAMES  
12 JUDAH.

13 **THE COURT:** GOOD AFTERNOON.

14 **MS. RIVERA:** GOOD AFTERNOON, YOUR HONOR. SYLVIA  
15 RIVERA WITH MORRISON & FOERESTER, FOR DEFENDANTS OTTOMOTTO AND  
16 UBER TECHNOLOGY. AND ALONG WITH ME IS ESTHER CHANG.

17 **MR. SCHUMAN:** GOOD AFTERNOON, YOUR HONOR. BRETT  
18 SCHUMAN FROM GOODWIN PROCTER ON BEHALF OF OTTO TRUCKING, ET AL.

19 I HAVE JAMES LIN WITH ME HERE, AS WELL.

20 **THE COURT:** ALL RIGHT.

21 **SPECIAL MASTER:** GOOD AFTERNOON, YOUR HONOR. JOHN  
22 COOPER, SPECIAL MASTER.

23 **THE COURT:** GOOD AFTERNOON.

24 ALL RIGHT. SO LET'S SORT OF -- I JUST THOUGHT IT  
25 WOULD BE EASIER TO DO ORALLY SOME OF THESE THINGS.

1                   BUT LET'S START WITH THE SANCTIONS MOTION. SO I'LL  
2 NEED OTTO TRUCKING UP HERE AND WAYMO. I DON'T NEED UBER.

3                   AND LET ME SORT OF TELL YOU MY ANALYSIS GOING THROUGH  
4 IT. FIRST, I JUST WANT TO PUT IN CONTEXT, WHICH IS I THINK  
5 PRETTY MUCH EVERY SINGLE FILING IN THIS CASE, WHICH HAS BEEN  
6 MORE THAN A FEW, HAS WITH IT AN ADMINISTRATIVE MOTION TO SEAL.

7                   AND IF THE COURT WERE -- JUDGE ALSUP AND MYSELF -- TO  
8 RULE ON THOSE IN CONNECTION WITH EVERY MOTION, YOU'D NEVER GET A  
9 RULING ON THE MERITS IN ANYTHING, BECAUSE THOSE WE ACTUALLY  
10 LOOKED CAREFULLY AT THEM, AND THEY TOOK A LOT OF TIME.

11                  SO WHAT WE'VE BEEN DOING IS RULING ON THE MOTION,  
12 PUTTING THOSE ADMINISTRATIVE MOTIONS TO SEAL ASIDE, RULING ON  
13 THEM WHEN WE CAN. IN FACT, THE LAST FEW WEEKS MY EXTERNS HAVE  
14 BEEN WORKING ON SORT OF GLOBAL ONES TO TRY TO GET EVERYTHING  
15 CAUGHT UP.

16                  WITH RESPECT TO, THOUGH, THE MOTION TO SEAL THAT IS  
17 AT ISSUE IN THE MOTION TO SANCTION, I WENT AHEAD AND RULED ON  
18 THAT ONE IMMEDIATELY, BECAUSE, IF YOU RECALL, THERE WAS AN ISSUE  
19 AS TO -- I THINK IT WAS AN E-MAIL FROM MR. -- I ALWAYS  
20 MISPRONOUNCE HIS NAME.

21                  **MR. BAKER:** ZBROZEK, YOUR HONOR.

22                  **THE COURT:** ZBROZEK. AND THERE WAS AN ISSUE, AND IT  
23 WASN'T REALLY SEALABLE. AND SO I WANTED TO GET THAT OUT. AND  
24 ACTUALLY BY THE TIME YOU REVISED IT YOU AGREED IT WASN'T  
25 SEALABLE AT THAT POINT.

1                   SO I RULED. BUT MY RULING WAS INTENTIONALLY, I WILL  
2 SAY, SOMEWHAT AMBIGUOUS, AT LEAST NOT CLEAR. I SAID THE  
3 TECHNICAL -- THE TECHNOLOGICAL INFORMATION WAS SEALED. AND I  
4 DID THAT BECAUSE, AGAIN, THAT IF I WAS TO GO THROUGH LINE BY  
5 LINE AND SAY WHICH ONE, YOU'D NEVER GET A RULING OUT OF ME ON  
6 THE MERITS. AND I THINK WE ALL CARE MORE ABOUT THE RULING ON  
7 THE MERITS.

8                   SO AT THAT POINT I RELY ON THE PARTIES TO THEN MEET  
9 AND CONFER AND COME UP WITH:

10                  "WELL, WHAT DOES SHE MEAN? WHAT DOES THAT AGREE  
11 WITH?"

12                  AND IF YOU CAN'T AGREE, YOU CAN BRING IT BACK TO ME,  
13 IF IT WAS IMPORTANT. I ASSUMED IT PROBABLY WOULDN'T BE, AND  
14 THAT YOU WOULD BE ABLE TO AGREE. BECAUSE WHAT WAS IMPORTANT TO  
15 OTTO TRUCKING AND UBER WAS THAT OTHER SUBSTANTIVE STUFF, NOT THE  
16 DOMAIN NAME OF THE SERVER. RIGHT?

17                  AND THAT IS, IN FACT, WHAT HAPPENED ON THAT DAY.  
18 UBER THEN WANTED TO SHOW TO THEIR CLIENT -- I DON'T KNOW, BY THE  
19 WAY, WHY THIS STUFF IS AEO. BUT, NONETHELESS, UBER TOOK EXHIBIT  
20 10, IS WHAT WE'RE TALKING ABOUT, AND SENT IT IN GOOD FAITH.

21                  UBER SENT IT IN GOOD FAITH TO WAYMO AND SAID:

22                  "THIS IS WHAT WE'RE PROPOSING TO SHOW OUR CLIENT  
23 WITH THESE REDACTIONS." AND IT INCLUDED THE SVN SERVER NAME  
24 REDACTED.

25                  SO THERE SEEMED TO BE AN AGREEMENT THAT THE COURT'S

1 ORDER APPLY TO THAT. AND WAYMO THOUGHT SOME OTHER THINGS,  
2 PERHAPS, SHOULD BE REDACTED. AND YOU WENT BACK AND FORTH. AND  
3 OTTO TRUCKING WAS CC'D ON ALL THOSE. OTTO TRUCKING'S LEAD  
4 COUNSEL WAS CC'D ON ALL THOSE COMMUNICATIONS. RIGHT?

5 **MR. BAKER:** YES.

6 **THE COURT:** AND FIVE DAYS LATER -- THAT WAS SEPTEMBER  
7 1ST -- SEPTEMBER 6TH OTTO TRUCKING FILED EXHIBIT 10 IN RESPONSE  
8 TO MY ORDER, AS IT'S SUPPOSED TO DO, BECAUSE SOME OF THE STUFF  
9 IS NOT SEALED.

10 HOWEVER, IT DIDN'T SEAL THE SVN SERVER DOMAIN NAME.  
11 SO THAT WAS MISTAKE NUMBER ONE. THAT WAS AN ERROR.

12 IT WAS IN ERROR FOR TWO REASONS. ONE: OTTO TRUCKING  
13 WAS COPIED ON THE COMMUNICATIONS BETWEEN UBER AND WAYMO, WHICH  
14 ATTACHED THE EXHIBIT 10, AND THERE WAS NO DISPUTE THAT THAT  
15 WOULD BE SEALED.

16 SO IF OTTO TRUCKING DISPUTED THAT, IT WAS OBLIGATED  
17 TO BRING THAT TO WAYMO'S ATTENTION, AND THEN TO THE COURT'S  
18 ATTENTION, NOT TO UNILATERALLY DECIDE IT WASN'T GOING TO SEAL.  
19 THAT WAS ERROR NUMBER ONE.

20 AND SECOND, TO THE EXTENT THAT, AS HAS BEEN EXPLAINED  
21 IN THE PAPERS, THE ATTORNEYS WHO FILED IT ON OTTO TRUCKING'S  
22 BEHALF WASN'T AWARE OF THOSE COMMUNICATIONS. I DON'T THINK  
23 THAT'S AN EXCUSE, BUT GIVEN THE SIZE OF THIS CASE,  
24 UNDERSTANDABLE.

25 AGAIN, MY ORDER WAS NOT SPECIFIC. AND BEFORE OTTO

1 TRUCKING FILED EXHIBIT 10 I CERTAINLY EXPECTED -- OR AT LEAST  
2 000HOPED -- THAT THE PARTIES AND THE PARTY FILING IT WOULD SEND  
3 THE COPY TO WAYMO AND SAY:

4 "THIS IS WHAT WE BELIEVE IS THE TECHNOLOGICAL  
5 INFORMATION THE COURT WAS REFERRING TO, AND THIS IS WHAT WE'RE  
6 SEALING. DO YOU AGREE OR DISAGREE?"

7 SO THAT'S WHAT OTTO SHOULD HAVE DONE. THAT THAT WAS  
8 ERROR NUMBER TWO. AND THEN, THAT ERROR WAS COMPOUNDED WHEN IT  
9 THEN WENT THROUGH AND IN CONNECTION WITH OTHER MOTIONS, I THINK,  
10 MOTION IN LIMINE SEPTEMBER 13TH, IN CONNECTION WITH MOTION IN  
11 LIMINE NUMBER 26; SEPTEMBER 15TH, IN CONNECTION WITH OTTO  
12 TRUCKING'S OPPOSITION TO WAYMO'S MOTION FOR AN ORDER TO SHOW  
13 CAUSE; SEPTEMBER 16TH, OTTO TRUCKING'S MOTION IN LIMINE TO  
14 EXCLUDE TESTIMONY OF MR. BROWN. AGAIN, SEPTEMBER 16TH IN  
15 CONNECTION WITH OTTO TRUCKING'S MOTION IN LIMINE TO EXCLUDE THE  
16 TESTIMONY OF DR. HESSELINK.

17 EACH OF THOSE TIMES IT FILED EXHIBIT 10, WITH A  
18 DOMAIN NAME REDACTED. AND THAT'S AN ERROR FOR THE SAME REASON:  
19 THAT I HAD EXPECTED THAT IT WOULD MEET AND CONFER WITH WAYMO  
20 BEFORE DOING THAT.

21 AND THEN, OF COURSE, FINALLY, THEN, WHEN ON  
22 SEPTEMBER 27TH OTTO TRUCKING WAS CONTACTED BY WAYMO, WHO  
23 BELATEDLY REALIZED THAT THIS HAD BEEN FILING. OTTO TRUCKING  
24 SHOULD HAVE IMMEDIATELY AGREED TO HAVE THAT SEALED, AND SO THAT  
25 THE ISSUE COULD BE RESOLVED BY THE COURT.

1                   BUT THERE WAS ABSOLUTELY NO GOOD FAITH REASON TO  
2 OBJECT TO GETTING IT LOCKED IN THE INTERIM AT ALL. AND, IN  
3 FACT, WHAT HAPPENED WAS ON FRIDAY AFTERNOON MR. COOPER CALLED  
4 THE COURT'S CHAMBERS AND SAID:

5                   "THEIR'S A DISPUTE ABOUT THIS AND THEY NEED TO  
6 SEE YOU AND HEAR YOU RIGHT AWAY."

7                   I SAID:

8                   "WHAT ARE YOU TALKING ABOUT? JUST LOCK IT AND  
9 I'LL DEAL WITH IT LATER."

10                  BUT I SHOULDN'T HAVE EVEN HAD TO DO THAT, BECAUSE  
11 OTTO TRUCKING, AS SOON AS THEY KNEW THAT WAYMO WAS CONTESTING  
12 IT, SHOULD HAVE SEALED IT. THERE WAS ABSOLUTELY NO REASON NOT  
13 TO DO THAT. NONE WHATSOEVER NOT DO THAT. AND THAT'S WHAT  
14 SHOULD HAVE BEEN DONE.

15                  YOU'RE PRESERVING YOUR RIGHT. YOU COULD THEN ARGUE  
16 TO THE COURT LATER THAT IT DOESN'T DESERVE SEALING. SO THAT WAS  
17 ANOTHER ERROR. BUT SO THOSE WERE ALL THOSE ERRORS THERE.

18                  BUT ON THE OTHER HAND, THEN, WAYMO -- AND THIS,  
19 MR. BAKER, I JUST FIND UNFATHOMABLE -- SUBMITTED ON ALL THOSE  
20 SEPTEMBER 13, 15, 15, 16 SUBMITTED DECLARATIONS IN SUPPORT OF  
21 OTTO TRUCKING'S ADMINISTRATIVE MOTION TO SEAL EXHIBIT 10, SAYING  
22 THE DOMAIN NAME SHOULD BE SEALED, EVEN THOUGH THE DOCUMENT,  
23 EXHIBIT 10, THAT THEY FILED, IT WAS NOT SEALED.

24                  AND THE ONLY EXPLANATION OF THAT IS THE PERSON WHO  
25 SUBMITTED AND FILED THAT DECLARATION ACTUALLY DIDN'T LOOK AT

1 THAT EXHIBIT 10 THAT WAS IN THE DOCKET.

2 AND THAT, TO ME, IS ALSO A HUGE ERROR, BECAUSE MY  
3 STAFF IS SITTING THERE GOING THROUGH ALL THESE MOTIONS TO SEAL.  
4 AND, IN FACT, YOU GUYS AREN'T EVEN LOOKING AT ALL THIS STUFF  
5 THAT IS BEING FILED. AND SO THAT YOU DISCOVERED THIS  
6 SEPTEMBER 27TH AS OPPOSED TO SEPTEMBER 6TH IS WAYMO'S BAD,  
7 BECAUSE ABSOLUTELY THEY SHOULD BE POLICING IT.

8 SO MY ANALYSIS IS THAT IT'S OFFSETTING PENALTIES  
9 HERE, AND THAT NO ONE SHOULD GET ANYTHING. SO I'M DENYING YOUR  
10 MOTION TO SANCTION. BUT OTTO TRUCKING ALSO DOES NOT TO GET TO  
11 ARGUE IN THIS CASE THAT SOMEHOW -- AND WE'RE NOT TALKING ABOUT  
12 THE DOMAIN NAME BEING THE TRADE SECRET. IT'S WHAT IS IN THERE.  
13 AND I ASSUME BY NOW WAYMO HAS ACTUALLY CHANGED THE DOMAIN NAME.  
14 RIGHT? SO WE DON'T EVEN HAVE TO WORRY ABOUT SEALING IT ANYMORE,  
15 I WOULD HOPE.

16 **MR. BAKER:** WELL, WE'RE IN THE PROCESS. I'LL CHECK  
17 WITH MY CLIENT.

18 **THE COURT:** WE WILL GET THERE, YEAH. LET ME FINISH,  
19 AND THEN YOU CAN TELL ME. BUT I WOULD ASSUME THAT THEY WOULD DO  
20 THAT.

21 SO YOU DON'T GET TO ARGUE THAT IT'S NOT A TRADE  
22 SECRET BECAUSE FOR THESE SIX FILINGS IT WAS OUT IN THE PUBLIC  
23 RECORD. BUT, ON THE OTHER HAND, I'M NOT GOING TO GRANT THEIR  
24 MOTION SAYING YOU'RE EXCLUDED FROM ARGUING IT'S NOT A TRADE  
25 SECRET. RIGHT? WE'RE JUST GOING OVER OFFSETTING PENALTIES

1 THERE. THAT'S MY ANALYSIS, AND YOU CAN TELL ME.

2 **MR. BAKER:** SURE. AND I'LL JUST RESPOND BRIEFLY,  
3 YOUR HONOR, TO OUR REVIEW OF THE SEALING PAPERS. I THINK WHAT  
4 HAPPENED WAS THAT WE WERE REVIEWING THE PAPERS, BUT THAT NO ONE  
5 CAUGHT THAT THE DOMAIN NAME HAD BEEN UNREDACTED, WHICH IS NOT  
6 ENTIRELY SURPRISING, BECAUSE IT WAS NEVER IN DISPUTE.

7 YOU KNOW, ON SEPTEMBER 1ST, WHEN WE HAD THIS LENGTHY  
8 E-MAIL EXCHANGE --

9 **THE COURT:** NO, I SAID ALL THAT.

10 **MR. BAKER:** YES.

11 **THE COURT:** I UNDERSTAND ALL THAT. BUT, MR. BAKER, I  
12 CAN SEE THAT ONE TIME, BUT I CAN'T SEE IT ONE, TWO, THREE, FOUR,  
13 FIVE TIMES OR, NO, SIX TIMES, BECAUSE THERE WAS ALSO UBER DID IT  
14 WITH ONE MOTION, AS WELL. RIGHT? SIX TIMES. THAT IT WAS  
15 MISSED SIX TIMES? NO, IT WASN'T LOOKED AT.

16 **MR. BAKER:** BUT THE REASON I THINK IT WAS MISSED SIX  
17 TIMES IS BECAUSE IT WAS THE SAME DOCUMENT. SO WHEN PEOPLE ARE  
18 PREPARING THESE PAPERS THEY SEE THAT THIS IS THE EXACT SAME  
19 EXHIBIT THAT THEY HAVE ALREADY DEALT AND SO THEY PUT IT IN THE  
20 EXACT SAME PAPER.

21 **THE COURT:** WITHOUT LOOKING AT IT.

22 **MR. BAKER:** WITHOUT SEEING --

23 **THE COURT:** RIGHT. AND THAT WAS THE ERROR. THAT'S  
24 THE ERROR.

25 **MR. BAKER:** I UNDERSTAND.

1                   **THE COURT:** BECAUSE, QUITE HONESTLY, IF IT'S SO  
2 IMPORTANT THAT THE COURT CAN LOOK AT IT AND DO THAT, THEN YOU  
3 CAN SPEND THE TIME TO LOOK AND SEE WHAT IS BEING DONE. I MEAN  
4 YOU, IN THE BROADER SENSE, WHAT IS BEING DONE AND FILE THAT.

5                   SO THAT'S WHY I THINK, YOU KNOW, WHATEVER YOU WANT,  
6 YOUR FEES OR COSTS, YOU KNOW, COME ON. GIVE ME A BREAK. THE  
7 FEES THAT WAYMO SPENDS ON THIS CASE, THAT'S NOTHING. THAT'S NOT  
8 THE POINT.

9                   THE POINT I'M TRYING TO MAKE IS NOBODY SHOULD GET A  
10 POINT FROM THIS WHOLE HOT MESS AT ALL. BUT WE'LL JUST RESET.  
11 GO BACK TO THE WAY IT SHOULD BE. IT SHOULD BE SEALED FOR THE  
12 PURPOSES OF THE DISCOVERY. I THINK THEY HAVE MADE A GOOD CAUSE  
13 SHOWING FOR DISCOVERY FOR THE ARGUMENTS THAT THEY MADE.

14                  NOW, BUT THAT'S WHERE I GO BACK, MR. BAKER. I WOULD  
15 ASSUME NOW THAT THERE'S A NEW DOMAIN NAME.

16                  **MR. BAKER:** YES, I THINK THAT'S RIGHT, YOUR HONOR. I  
17 MEAN, WE HAVE INFORMED -- OBVIOUSLY, AS SOON AS THIS HAPPENED WE  
18 INFORMED OUR CLIENT. AND MY UNDERSTANDING IS THAT THEY PUT IN A  
19 PROCESS TO TRANSFER THE FILES OVER TO AN NEW DOMAIN NAME.

20                  THE ONLY THING I WOULD LIKE TO ASK, YOUR HONOR, IS IF  
21 I CAN JUST CHECK WITH THE CLIENT, SEE WHAT THE STATUS IS. IF  
22 THERE'S ANY REASON THAT THEY WERE NOT ABLE TO COMPLETE THAT  
23 PROCESS AND HAD TO LEAVE IT UP ON THIS SITE, THEN, OF COURSE, WE  
24 WOULD WANT ALL THE FILINGS TO REMAIN SEALED.

25                  BUT THE OTHER RELIEF THAT WE WOULD ASK THERE ARE

1       NUMEROUS SCRAPER SITES THAT MONITOR THE DOCKETS OF THE COURT AND  
2       CAN POSSIBLY PULL DOWN INSTANTANEOUSLY VARIOUS -- YOU KNOW, THE  
3       FILINGS. AND WHEN WE HAVE AN INADVERTENT FILING, WE HAVE TO GO  
4       TO ALL THESE SCRAPER SITES AND TRY TO RETRIEVE THE INADVERTENT  
5       FILING.

6                  I THINK THAT IT HAS BEEN DONE IN THIS CASE. BUT TO  
7       THE EXTENT THAT IT HASN'T, AND THE NETWORK STILL NEEDS TO BE  
8       DONE, I WOULD JUST SUGGEST THAT THAT'S SOMETHING THE DEFENDANTS  
9       SHOULD HAVE TO DO.

10                 **THE COURT:** BUT WHY WILL IT NEED TO BE DONE  
11       IF -- WELL, IT ONLY NEEDS TO BE DONE IF THEY HAVEN'T CHANGED THE  
12       DOMAIN NAME.

13                 **MR. BAKER:** THAT'S RIGHT, THAT'S RIGHT, YOUR HONOR.  
14       THAT'S RIGHT.

15                 **THE COURT:** I CAN'T BELIEVE THAT THAT HASN'T BEEN  
16       DONE OR THAT IT CAN'T BE DONE. SO WHY DON'T YOU FIRST JUST DO  
17       THAT?

18                 **MR. BAKER:** I WILL.

19                 **THE COURT:** THAT'S THE RESPONSE.

20                 ANYWAY, DID YOU WANT TO SAY ANYTHING?

21                 **MR. SCHUMAN:** WELL, YOUR HONOR, I OBVIOUSLY CAME  
22       PREPARED TO ADDRESS ALL THE POINTS, BUT I WILL ACCEPT THE  
23       COURT'S RULING. I DON'T APPRECIATE -- LET ME SAY SO THE RECORD  
24       IS CLEAR: I APPRECIATE THE COURT'S TAKING THE MOTIONS  
25       SERIOUSLY. WE TOOK THIS MOTION VERY SERIOUSLY. I RESPECT THE

1 COURT'S VIEWS AS TO WHAT WE SHOULD HAVE DONE DIFFERENTLY.

2 OBVIOUSLY, WE POINTED OUT THESE DECLARATIONS. THEY  
3 SAID WHAT THE COURT SAID THEY SAID. THEY SUPPORTED OUR FILING,  
4 AND THEN THEREFORE THE THING KEPT GETTING FILED.

5 **THE COURT:** BUT THAT'S AFTER THE FACT. WHAT I WOULD  
6 LIKE TO HEAR, MR. SCHUMAN, IS YOU AGREE. AND BOTH SIDES, WHAT I  
7 FIND PROBLEMATIC ABOUT YOUR PLEADINGS -- AND IT'S NORMAL FOR  
8 THIS CASE -- NO SIDE WOULD TAKE RESPONSIBILITY FOR WHAT THEY  
9 DID.

10 SO I GET A REPLY FROM WAYMO SAYING:

11 "WELL, WE DIDN'T REALLY SUPPORT IT BECAUSE WE  
12 SAID IN OUR DECLARATION THAT IT SHOULD BE REDACTED," WITHOUT  
13 ACKNOWLEDGING THAT CLEARLY SOMEONE WASN'T LOOKING AT ALL THOSE  
14 FILINGS. RIGHT?

15 AND YOU SAY:

16 "WELL, LOOK WHAT WAYMO DID."

17 BUT I SAY:

18 "YOU SHOULD HAVE NEVER, EVER FILED IT PUBLICLY."

19 AND THE MOST ALARMING THING WAS WHEN THEY BROUGHT IT  
20 TO YOUR ATTENTION, THE RESPONSE IS:

21 "WELL, THAT SHIP HAS SAILED. TOO LATE."

22 NO. YOU AGREE TO LOCK IT, ESPECIALLY IF IT WAS  
23 INCONSEQUENTIAL UNLESS YOU WERE TRYING UNFAIRLY TO GET A  
24 TACTICAL ADVANTAGE IN THE CASE, WHICH I WOULDN'T HAVE LET YOU  
25 DO.

1 SO THAT'S WHAT ACTUALLY I WANT TO HEAR, NOT -- I SAID  
2 WHAT WAYMO DID. I SAID WHAT YOU DID. WHAT I WANT TO HEAR OTTO  
3 TRUCKING SAYING IS IT WON'T HAPPEN AGAIN.

4 AND THEN, ALSO, WITH RESPECT TO THE OTHER FILINGS I  
5 RULED ON IT. WELL, YES. IT JUST SHOULD NEVER HAVE BEEN DONE AT  
6 ALL. IT'S CONFIDENTIAL. I DON'T HAVE TO SAY ANYTHING GOING  
7 FORWARD. YOU DON'T HAVE AN ORDER. IT WAS NEVER BROUGHT TO MY  
8 ATTENTION THAT IT SHOULD BE DISPUTED. AND, IN FACT, IT'S GOING  
9 TO BECOME MOOT BECAUSE THEY ARE GOING TO CHANGE THE DOMAIN NAME,  
10 ANYWAY, SO THAT'S ACTUALLY WHAT I WANT TO HEAR.

11 **MR. SCHUMAN:** RIGHT. SO IT WON'T HAPPEN AGAIN. I  
12 THINK THAT'S ONE OF THE THINGS THE COURT WANTS TO HEAR. AND I  
13 DO RESPECT THE COURT'S VIEW THAT WE SHOULD NOT HAVE FILED IT  
14 INITIALLY AS WE DID.

15 **THE COURT:** OKAY.

16 **MR. SCHUMAN:** I DON'T WANT TO TALK -- I RESPECT THE  
17 COURT'S RULING. I DON'T WANT TO TALK THE COURT OUT OF ITS  
18 RULING.

19 THE INITIAL E-MAILS AND THE PAPERS REFLECT THIS WAS  
20 BETWEEN WAYMO AND UBER. MR. CHATTERJEE, AND NOT THE ENTIRE  
21 TEAM. NOT MYSELF, FOR EXAMPLE, WERE CC'D ON SOME OF THOSE  
22 E-MAILS WHICH CAME IN THE FRIDAY BEFORE LABOR DAY, AND MR.  
23 CHATTERJESS WAS OUT OF TOWN.

24 WE MISSED THEM BECAUSE THE WHOLE TEAM WASN'T COPIED.  
25 SO WE MISSED THEM.

1                   **THE COURT:** I UNDERSTAND AND ACCEPT THAT. BUT THAT  
2 DOESN'T EXPLAIN WHY, THEN, WHEN YOU GET THIS ORDER -- I MEAN,  
3 QUITE HONESTLY, NOW WHAT I'M GOING TO HAVE TO DO IN ALL MY  
4 SEALING ORDERS IS SAY:

5                   "BY THE SAY, BEFORE YOU HAVE FILE IT NOW, THE  
6 NEW DOCUMENT, IN ACCORDANCE WITH MY ORDER, MAKE SURE YOU PLEASE  
7 SEND A COPY" -- ALMOST ALWAYS WAYMO BECAUSE IT'S ALWAYS YOUR  
8 TRADE SECRET -- "TO THEM, AND RUN IT BY THEM BEFORE YOU FILE  
9 IT."

10                  I HAVE TO DO THAT NOW, AND I JUST DIDN'T THINK I HAD  
11 TO DO IT BEFORE.

12                  **MR. SCHUMAN:** I UNDERSTAND, YOUR HONOR. AND I THINK  
13 WE'RE COMING NEARLY TO THE END OF THE DISCOVERY. IT WON'T  
14 HAPPEN AGAIN. I RESPECT COURT'S --

15                  **THE COURT:** WELL, I THINK WE ARE.

16                  OKAY?

17                  **MR. BAKER:** THANK YOU, YOUR HONOR.

18                  **THE COURT:** ALL RIGHT.

19                  **MR. SCHUMAN:** THANK YOU, YOUR HONOR.

20                  **THE COURT:** I WAS GOING TO WRITE SOMETHING, BUT MAYBE  
21 I DON'T NEED TO WRITE SOMETHING. DO YOU THINK? WELL, I DON'T  
22 WANT TO PUT YOU ON THE SPOT, BUT I ASSUME NOBODY IS GOING TO  
23 APPEAL ME ON THIS ISSUE.

24                  **MR. BAKER:** I DON'T THINK SO.

25                  **MR. SCHUMAN:** WE'LL WAIVE APPEAL, YOUR HONOR.

1                   **THE COURT:** ALL RIGHT. THEN, I WON'T WRITE ANYTHING.

2                   **MR. BAKER:** THANK YOU, YOUR HONOR.

3                   **MR. SCHUMAN:** THANK YOU, YOUR HONOR.

4                   **THE COURT:** OKAY. NOW, LET'S TALK ABOUT -- WE'RE  
5 TALKING ABOUT DOCKET NUMBER 1994, AND THEN WE NEED TO SET A  
6 BRIEFING SCHEDULE IN WHAT I THINK MAY BE THE LAST TWO DISCOVERY  
7 DISPUTES.

8                   MAYBE THAT'S OFF, BUT LET'S FIRST TALK ABOUT  
9 MR. LEVANDOWSKI'S LAPTOP. THERE'S TWO LAPTOPS THAT APPARENTLY  
10 HE USED AT UBER.

11                  AND I GUESS, MR. PERLSON, MY FIRST QUESTION IS: WHAT  
12 IS THE REQUEST, THE DOCUMENT REQUEST THAT THIS WAS COVERED BY?

13                  IN OTHER WORDS, HAD YOU PREVIOUSLY ASKED TO INSPECT  
14 ALL DEVICES USED BY MR. LEVANDOWSKI AT UBER?

15                  **MR. PERLSON:** WELL, WE HAD -- THE COURT'S ORDER  
16 REQUIRED THEM TO SEARCH LAPTOPS OR LEVANDOWSKI DEVICES. WE  
17 THOUGHT THAT HE WAS REFUSING -- THAT HE WAS REFUSING BASED ON  
18 WHAT THEY HAD BEEN REPRESENTING ALL ALONG. IF YOU RECALL, ALL  
19 ALONG WE'VE BEEN TOLD THIS STORY THAT MR. LEVANDOWSKI WASN'T  
20 COOPERATING IN RELATION TO HIS, YOU KNOW, PERSONAL PROPERTY,  
21 WHICH PERSONAL LAPTOPS WOULD INCLUDE. AND THAT THEY WOULD BE  
22 SUBJECT TO THE FIFTH AMENDMENT.

23                  AND THAT ADDITIONALLY, OTTO TRUCKING SAID:

24                  "WELL, WE DON'T HAVE ANY CONTROL OVER  
25 MR. LEVANDOWSKI, AND WE CAN'T PRODUCE DOCUMENTS FROM HIM BECAUSE

1 HE'S NOT COOPERATING, IN AN ORDER THAT YOU ASKED FOR," SO --

2                   **THE COURT:** SO I'M JUST GOING TO GO BACK FOR A  
3 MINUTE. SO WHAT YOU SAID IS THAT IT WAS THAT THEY WERE SUPPOSED  
4 TO SEARCH THEM.

5                   **MR. PERLSON:** RIGHT.

6                   **THE COURT:** OKAY. SO THEY SAY THEY DID.

7                   **MR. PERLSON:** NO, THEY DIDN'T SEARCH THEM. WHAT THEY  
8 DID WAS -- ALL THEY DID WAS THAT THEY -- WELL, FIRST OF ALL, HAD  
9 WE KNOWN THESE EXISTED WE MAY HAVE REQUESTED TO INSPECT THEM.  
10 WE HAD NO BASIS TO ASK TO INSPECT THEM BECAUSE THEY HID THEM  
11 FROM US.

12                  **THE COURT:** NO. WAIT. WAIT. THAT'S WHY -- THAT'S  
13 WHY MY FIRST QUESTION WAS:

14                  "WHAT WAS YOUR REQUEST?"

15                  IT'S CERTAINLY NOT A SECRET THAT HE HAD DEVICES THAT  
16 HE USED WHEN HE WAS AT UBER, WHETHER YOU KNEW WHAT THE DEVICES  
17 WERE OR NOT.

18                  SO MY QUESTION IS: DID YOU HAVE A REQUEST THAT SAID:

19                  "WE WANT TO THE INSPECT ALL DEVICES THAT  
20 MR. LEVANDOWSKI USED AT UBER?"

21                  **MR. PERLSON:** THE PI ORDER ALLOWED US TO INSPECT ALL  
22 ONGOING LIDAR WORK, WHICH IS, PRESUMABLY, THESE LAPTOPS WHICH  
23 APPARENTLY WERE USED AT WORK. WE SHOULD HAVE BEEN ABLE TO  
24 INSPECT THEM, AND THEY WERE NOT MADE AVAILABLE. AND WE DID ASK  
25 TO INSPECT ALL OF MR. LEVANDOWSKI'S DEVICES, AND THEY WERE NOT

1 MADE AVAILABLE. AND SO THAT'S ONE.

2           **THE COURT:** OKAY. SO WHAT WAS THAT REQUEST?

3           YOU CAN COME UP.

4           **MR. PERLSON:** YES, MR. JUDAH KNOWS MORE SPECIFICS.

5           **MR. JUDAH:** YOUR HONOR, YOU KNOW, MR. JAFFE ENGAGED  
6 IN A NUMBER OF THESE REQUESTS ON MEET AND CONFERS. AND HE WOULD  
7 SHOW UP AT INSPECTIONS AND SAY:

8                 "WE WANT TO SEE MR. LEVANDOWSKI'S, YOU KNOW,  
9 WORKSTATIONS. WE WANT TO INSPECT WHAT HE'S DOING WITH LIDAR."

10               AND THEY MADE SOME OF THOSE AVAILABLE, BUT THESE TWO  
11 WERE NEVER EVEN MENTIONED. SO I CAN GO BACK, AND WE CAN SEND  
12 YOU A LAUNDRY LIST OF INSTANCES WHERE BOTH IN CORRESPONDENCE AND  
13 I CAN ATTEST TO MEET AND CONFERS WHERE WE ASKED TO INSPECT  
14 MR. LEVANDOWSKI'S DEVICES.

15               **THE COURT:** AND HE WAS STILL AT UBER AT THE TIME?

16               **MR. JUDAH:** IT DEPENDS ON WHEN THOSE REQUESTS WERE  
17 FIRST MADE. WHEN THEY WERE FIRST MADE AFTER THE PI ORDER, HE  
18 WAS STILL AT UBER. BUT, YOU KNOW, HE WAS TOLD HE WAS TERMINATED  
19 ON MAY 26TH. AND SO MOST OF THE REQUESTS WERE PROBABLY MADE  
20 AFTERWARDS.

21               **THE COURT:** OKAY. OKAY.

22               **MR. PERLSON:** AND THEN TO RESPOND TO YOUR -- I MEAN,  
23 WE DID HAVE -- IN RELATION TO THE RFP'S, I MEAN WE HAD ALL SORTS  
24 OF RFP'S THAT WOULD HAVE RESPONSIVE INFORMATION. LIKE, FOR  
25 EXAMPLE, YOU KNOW, LIKE DOWNLOADED MATERIALS, WHATEVER.

1                   **THE COURT:** BUT THEY SAY THEY SEARCHED IT.

2                   **MR. PERLSON:** WELL, HERE'S WHAT THEY DIDN'T DO.

3 THERE WAS A SEARCH, BUT FROM READING -- FIRST OF ALL, WE DON'T  
4 KNOW EXACTLY WHAT WAS SEARCHED, BECAUSE GOODWIN PROCTER, OTTO  
5 TRUCKING'S COUNSEL, HAD THE LAPTOPS. AND YOU SAW NO DECLARATION  
6 FROM THEM.

7                   MR. CHATTERJEE, WHO WAS SUPPOSEDLY INVOLVED IN THIS,  
8 ISN'T HERE. AND ALL WE HAVE IS A DECLARATION FROM MR. GONZALEZ,  
9 WHO SAYS THAT HE HAD A CONVERSATION WITH MR. CHATTERJEE. AND  
10 ALL I UNDERSTAND IS THAT THEY SEARCHED FOR ARE THE -- OR AT  
11 LEAST THAT MR. GONZALEZ THOUGHT THEY SEARCHED FOR -- WAS THE  
12 NAMES OF THE 14,000 FILES, AND THEN LIKE MAYBE 15 ADDITIONAL  
13 TERMS THAT WE HAD PROVIDED IN THE EXPEDITED DISCOVERY PHASE.

14                  I DON'T RECALL SEEING ANYTHING IN ANY OF THEIR PAPERS  
15 THAT SAYS THEY APPLIED ANY SEARCH TERMS FOR CUSTODIAL DOCUMENTS,  
16 OR THAT THEY LOOKED FOR, YOU KNOW, FILES, YOU KNOW, IN RELATION  
17 TO OUR RFP'S.

18                  **THE COURT:** LET ME ASK MS. RIVERA, BECAUSE IT WAS A  
19 REQUEST TO UBER.

20                  **MS. RIVERA:** THANK YOU, YOUR HONOR.

21                  SO WITH RESPECT TO MR. LEVANDOWSKI'S COMPUTERS, I  
22 WANT TO BE CLEAR. THE COMPUTERS THAT WE'RE TALKING ABOUT HERE  
23 ARE PERSONAL MACHINES. AND WE MADE AVAILABLE FOR INSPECTION TO  
24 WAYMO, AND THEY DID, IN FACT, INSPECT ALL OF THE DEVICES OF  
25 MR. LEVANDOWSKI THAT WE HAVE POSSESSION, CUSTODY OR CONTROL

1           OVER.

2           **THE COURT:** SO THESE WERE NOT UBER-ISSUED LAPTOPS.

3           **MS. RIVERA:** THESE ARE DEFINITELY NOT UBER-ISSUED  
4 COMPUTERS.

5           I DO WANT TO MENTION IT'S IN WAYMO'S PAPERS THAT  
6 THESE ARE COMPUTERS THAT WERE USED FOR UBER WORK. THAT IS A  
7 REFERENCE TO THE E-MAIL THAT MS. PADILLA SENT TO  
8 MR. LEVANDOWSKI.

9           THAT'S THE BASIS FOR THEIR STATEMENT. THERE HASN'T  
10 BEEN, YOU KNOW, ANY OTHER DISCOVERY THAT NECESSARILY PERTAINS TO  
11 THAT. HAVING SAID THAT, I WILL TELL YOUR HONOR -- THIS IS  
12 SOMETHING THAT WAYMO KNOWS -- IT'S OUR UNDERSTANDING THAT ONE OF  
13 THE COMPUTERS IN QUESTION IS A COMPUTER FOR WHICH THERE EXISTED  
14 A PARTIAL BACKUP, THE CRASH PLAN PARTIAL BACKUP ON THE UBER  
15 SYSTEM.

16           THAT'S MY UNDERSTANDING OF THE BASIS FOR BELIEVING  
17 THAT, AT LEAST AS TO ONE OF THE COMPUTERS, IT MUST HAVE BEEN  
18 USED FOR UBER WORK TO SOME DEGREE, BECAUSE THERE'S A PARTIAL  
19 BACKUP THAT EXISTS ON UBER'S SYSTEM.

20           THAT'S A PARTIAL BACKUP THAT HAS BEEN MADE AVAILABLE  
21 TO WAYMO, AND THEY INSPECTED. THEY INSPECTED IT IN JUNE. JUNE  
22 WAS WHEN THEY MADE THEIR REQUEST TO UBER, PURSUANT TO THE  
23 COURT'S PRELIMINARY INJUNCTION ORDER, TO INSPECT  
24 MR. LEVANDOWSKI'S DEVICES.

25           SO A MOMENT AGO COUNSEL INDICATED THAT REQUEST WAS

1 MADE BEFORE MR. LEVANDOWSKI WAS TERMINATED. AND, IN FACT, WAS  
2 MADE AFTER HIS TERMINATION. IT WAS MADE IN JUNE. AND  
3 EVERYTHING THAT WE HAD AVAILABLE TO US, WE MADE AVAILABLE TO  
4 WAYMO. AND THEY CAME OVER AND INSPECTED IT, I THINK, ON TWO  
5 SEPARATE OCCASIONS.

6 SO EVERYTHING THAT WE HAVE HAS BEEN MADE AVAILABLE.  
7 THE NOTION THAT THESE TWO PERSONAL COMPUTERS WERE HIDDEN IS  
8 COMPLETELY FALSE. LIKE I SAID, AS TO THE ONE COMPUTER THAT I  
9 CAN STAND BEFORE YOUR HONOR AND SAY I -- WE HAVE A GOOD FAITH  
10 REASON TO BELIEVE IT WAS USED AT LEAST ONCE ON UBER'S SYSTEM.  
11 THAT'S A COMPUTER THAT WAS DISCLOSED IN OUR RESPONSE TO  
12 EXPEDITED INTERROGATORY NUMBER THREE.

13 IT'S A COMPUTER THAT THEY INSPECTED THE PARTIAL CRASH  
14 PLAN BACKUP OF.

15 AS TO THE SECOND COMPUTER, I CAN'T TELL YOUR HONOR  
16 THAT WE HAVE ANY DEFINITIVE EVIDENCE THAT THAT COMPUTER WAS USED  
17 FOR UBER WORK. IT WAS MADE REFERENCE TO IN THE PADILLA E-MAIL,  
18 BUT THAT'S REALLY ALL WE KNOW. THAT ALSO IS A COMPUTER THAT WE  
19 CURRENTLY AND DURING THE LIFETIME OF THIS LITIGATION HAVE NEVER  
20 HAD POSSESSION, CUSTODY OR CONTROL OVER.

21 TO THE EXTENT WAYMO WANTED, YOU KNOW, THESE  
22 COMPUTERS, THIS IS SOMETHING THAT AT MS. PADILLA'S OCTOBER 2ND  
23 DEPOSITION SHE TESTIFIED:

24 "LOOK, I THINK THAT YOU HAVE TO TALK TO  
25 MR. LEVANDOWSKI'S PERSONAL COUNSEL."

1                   **THE COURT:** RIGHT. BUT WHAT I'M TRYING TO FIGURE  
2 OUT IS I THOUGHT UBER SAID THAT IT ASKED -- THAT IT DID HAVE  
3 GOODWIN RUN THE SEARCH TERMS. GOODWIN, I UNDERSTAND, WAS  
4 REPRESENTING MR. LEVANDOWSKI IN THE ARBITRATION.

5                   **MS. RIVERA:** CORRECT, YOUR HONOR. SO MS. PADILLA  
6 SENT HER E-MAIL ON APRIL 20TH ASKING FOR THESE COMPUTERS TO BE  
7 MADE AVAILABLE TO UBER, IMPLORING MR. LEVANDOWSKI TO TURN THOSE  
8 OVER TO US SO WE CAN IMAGE THEM AND PERFORM OUR SEARCHES. I  
9 THINK TWO DAYS LATER THERE'S AN EXCHANGE BETWEEN COUNSEL FOR  
10 UBER AND MR. LEVANDOWSKI'S PERSONAL COUNSEL IN THE ARBITRATION  
11 THAT GOOGLE COMMENCED.

12                  AS IT HAPPENS, HIS PERSONAL COUNSEL IN THAT  
13 ARBITRATION AT THE TIME WAS GOODWIN PROCTER. MY UNDERSTANDING  
14 HAD NOTHING TO DO WITH GOODWIN PROCTER'S REPRESENTATION OF OTTO  
15 TRUCKING IN THIS CASE. THIS WAS A COMMUNICATION BETWEEN COUNSEL  
16 FOR UBER AND COUNSEL FOR GOODWIN PROCTER IN THEIR CAPACITY AS  
17 THE AS MR. LEVANDOWSKI'S PERSONAL COUNSEL.

18                  WE ASKED THEM -- THIS WAS IN APRIL. SO THIS WAS  
19 BEFORE THE PARTIES HAD STARTED THE REGULAR DISCOVERY IN THE  
20 SENSE THAT WE HADN'T RECEIVED WAYMO'S 200 PLUS RFP'S. BUT WE  
21 COMMUNICATED WITH GOODWIN PROCTER; ASKED THEM TO RUN THE FILE  
22 NAMES OF THE 14,000 FILES, THE HASH VALUES AND THE -- I SAY  
23 APPROXIMATELY 100 OR SO SEARCH TERMS THAT THE PARTIES HAD BEEN  
24 USING FOR PURPOSES OF LOCATING ANY OF THOSE 14,000 FILES.

25                  AND THIS IS IN MY DECLARATION, YOUR HONOR, OF ABOUT A

1 MONTH LATER WE RECEIVED -- IT'S IN MY DECLARATION AND  
2 MR. GONZALEZ'S DECLARATION. ABOUT A MONTH LATER WE RECEIVED THE  
3 RESULTS. AND ABOUT A MONTH AFTER THAT WE PRODUCED ANY OF THE  
4 RESULTS THAT WE DEEMED TO BE RESPONSIVE.

5 IN ADDITION TO THAT, IN CONNECTION WITH EXPERT  
6 DISCOVERY, WE MADE AVAILABLE TO WAYMO A RELATIVITY DATABASE THAT  
7 INCLUDES ALL THE HITS, ANYTHING THAT HITS ON A TERM THAT WAS  
8 RELATED TO THE 14,000 FILES. SO ALL OF THOSE HITS HAVE BEEN  
9 MADE AVAILABLE TO THEM FOR INSPECTION.

10 **THE COURT:** BUT HIS LAPTOPS WERE IN THE RELATIVITY  
11 DATABASE.

12 **MS. RIVERA:** YOUR HONOR, WE, COUNSEL FOR UBER, IN  
13 CONNECTION WITH EXPERT DISCOVERY IN THIS CASE, TOOK ALL OF THE  
14 DOCUMENTS THAT WE HAD SEARCHED TO WHICH WE HAD APPLIED THE  
15 SEARCH TERMS THAT PERTAIN TO THE SEARCH FOR THE 14,000 FILES.

16 WE TOOK ALL THE DOCUMENTS THAT HIT ON THOSE SEARCH  
17 TERMS, PUT THEM IN A RELATIVITY DATABASE, AND INVITED WAYMO TO  
18 INSPECT THEM.

19 **THE COURT:** ALL RIGHT. BUT IN ANY EVENT --

20 **MR. PERLSON:** I DON'T RECALL THAT HAPPENING? IT MAY  
21 HAVE HAPPENED, BUT I DON'T RECALL IT.

22 **THE COURT:** OKAY. ALL RIGHT.

23 **MS. RIVERA:** IT HAPPENED. IT WAS TESTIFIED TO BY OUR  
24 FORENSIC EXPERT.

25 **MR. PERLSON:** WHEN DID IT HAPPEN? I'M ASKING. NO

1       ONE HERE KNOWS WHEN THAT HAPPENED.

2                   **MS. RIVERA:** I DON'T KNOW THE DATE. MR. FAULKNER  
3 TESTIFIED TO IT ON SEPTEMBER 28 THAT THERE WAS A DATABASE THAT  
4 WAS AVAILABLE TO YOU GUYS.

5                   **MR. PERLSON:** OH, MR. FAULKNER MADE IT AVAILABLE TO  
6 US IN HIS DEPOSITION? IS THAT WHAT YOU ARE SAYING?

7                   **MS. RIVERA:** I DON'T KNOW THAT HE MADE IT AVAILABLE  
8 TO WAYMO DURING DEPOSITION. HE TESTIFIED TO THE FACT DURING HIS  
9 DEPOSITION THAT THERE WAS A SEARCH PERFORMED OF THESE COMPUTERS  
10 BY MR. LEVANDOWSKI'S PERSONAL COUNSEL, AND THAT ALL OF THE  
11 RESULTS OF THE SEARCHES FOR THE 14,000 FILES WERE PROMOTED TO  
12 THE RELATIVITY DATABASE, AND THOSE HAVE BEEN AVAILABLE TO WAYMO  
13 FOR INSPECTION.

14                  **MR. PERLSON:** YOUR HONOR, I FIND THIS -- I MEAN, WE  
15 DON'T KNOW WHAT SHE'S TALKING ABOUT.

16                  AND IF THERE'S EVIDENCE THAT YOU MADE IT AVAILABLE  
17 TO -- I DON'T UNDERSTAND HOW THEIR EXPERT COULD MAKE SOMETHING  
18 AVAILABLE TO US IN DISCOVERY. IF THERE'S SOME RELATIVITY  
19 DATABASE, THAT WOULD BE SOMETHING THAT I WOULD EXPECT THEM TO  
20 DO, NOT THEIR EXPERT.

21                  **THE COURT:** I DON'T THINK THAT'S WHAT SHE SAID.  
22 SHE'S NOT SAYING HE MADE IT AVAILABLE. I THINK HE WAS  
23 TESTIFYING THAT IT WAS AVAILABLE, AND THAT IT WAS OTHERWISE MADE  
24 AVAILABLE. I DON'T KNOW IF IT WAS OR IT WASN'T.

25                  UBER DOESN'T HAVE THE LAPTOPS.

**MR. PERLSON:** OKAY. WELL, LET ME ADDRESS A FEW THINGS THAT THEY SAID. WELL, THAT'S A PROBLEM. AND, FIRST OF ALL, THEY DID HIDE THE IDENTITY OF THE LAPTOPS. THEY KNEW ABOUT IT, AND THEY DIDN'T DISCLOSE IT TO US AFTER THEY HAD -- OR THAT THEY HAD, THEY WOULD HAVE ANY CONTROL OVER IT. BOTH COUNSEL FOR -- ON MAY 3RD, MR. GONZALEZ BEFORE THE COURT, HE SAID THAT YOU'RE CORRECT, THAT HE DOES HAVE A PERSONAL DEVICE THAT HIS LAWYERS HAVE INSTRUCTED HIM TO ASSERT THE FIFTH AMENDMENT ON.

THIS WAS AT A HEARING BEFORE JUDGE ALSUP, I BELIEVE.  
AND THIS IS, I GUESS, AT THE SAME TIME IN WHICH THEY ARE HAVING  
COMMUNICATIONS WITH GOODWIN PROCTER ABOUT GETTING THIS STUFF AND  
GETTING DOCUMENTS FROM THEM.

HOW'S THAT NOT WITHHOLDING IT FROM US, IF THAT'S ONE OF THE DOCUMENTS THAT THEY ARE TALKING ABOUT?

AND THEN, SECOND OF ALL, MR. CHATTERJEE, ON JULY 7TH,  
HAD REPRESENTED -- THE COURT ASKED HIM, HE SAID:

"HAVE YOU LOOKED AT -- HAVE YOU PERSONALLY  
LOOKED AT HIS PERSONAL COMPUTER?"

AND MR. CHATTERJEE RESPONDS -- NOT IDENTIFYING THE CONVERSATIONS THAT HAPPENED BETWEEN HIM AND UBER -- HE SAYS:

"WE'VE ASKED FOR A FORENSIC IMAGE, AND THEY HAVE REFUSED TO GIVE IT.

"WELL, MAYBE THAT'S THE PROOF IN THE PUDDING  
RIGHT HERE." THE COURT SAYS. AND THEN THE COURT SAYS:

"NO. I'M TALKING ABOUT HIS PERSONAL. I'M

1 TALKING ABOUT MR. LEVANDOWSKI'S OWN PERSONAL COMPUTER. THERE IS  
2 NO WAY THAT WAYMO WOULD HAVE THAT."

3 AND THEN, MR. CHATTERJEE SAYS:

4 "OH, THERE'S THE FIFTH AMENDMENT ISSUE ON THAT,  
5 YOUR HONOR."

6 THEY NEVER SAID:

7 "OH, BY THE WAY, WE HAD THE LAPTOPS FOR AWHILE,  
8 AND WE WERE RUNNING SEARCHES FOR UBER FOR THEM."

9 NO ONE EVER TOLD US THAT. THEY HAVE BEEN HIDDEN FROM  
10 US.

11 AND ALSO WE HEARD FROM UBER TRYING TO BACK AWAY FROM  
12 WHAT THEIR HEAD OF LITIGATION SAID TO MR. LEVANDOWSKI. EXHIBIT  
13 1 TO OUR OPENING, WHICH IS THIS APRIL 20TH E-MAIL FROM MS.  
14 PADILLA, SAYS:

15 "ANTHONY, I UNDERSTAND THAT THERE ARE TWO LAPTOP  
16 COMPUTERS IN YOUR POSSESSION THAT YOU HAVE USED FOR UBER WORK  
17 THAT HAVE NOT YET BEEN PROVIDED TO US FOR INSPECTION IN THE  
18 WAYMO LITIGATION."

19 AND THEN SHE GOES ON TO SAY:

20 "UBER IS OBLIGATED BY LAW TO REVIEW THESE  
21 COMPUTERS, AND IT'S ENTITLED TO DO SO. IT IS ESSENTIAL FOR OUR  
22 LAWYERS TO IDENTIFY AND RETRIEVE ANY, ANY UBER BUSINESS RECORDS  
23 OR ELECTRONIC MEDIA THAT BELONG TO THE COMPANY AND THAT HAVE  
24 POTENTIAL RELEVANCE TO THIS LITIGATION."

25 SO THEY CERTAINLY THOUGHT THAT THEY HAD RELEVANT

1 INFORMATION ON THEM, YET NOBODY DISCLOSED TO US THAT THEY WERE  
2 THERE OR THAT --

3 **THE COURT:** OKAY. BUT IF THEY DON'T HAVE THEM NOW.  
4 I'M JUST TRYING TO GET --

5 **MR. PERLSON:** I DON'T KNOW. I THINK WE'RE ENTITLED  
6 TO GET A DEPOSITION TO FIGURE OUT WHAT THEY DO OR DON'T HAVE. I  
7 MEAN, PERHAPS MAYBE IT'S MORE APPROPRIATE FOR OTTO TRUCKING, IF  
8 THEY ARE THE ONES WHO HAD IT, AND THEY SAY THEY NEVER HAD IT.  
9 BUT I THINK WE SHOULD --

10 **THE COURT:** WELL, I UNDERSTAND WHY YOU'RE CONFLATING  
11 THIS, BUT GOODWIN WAS REPRESENTING MR. LEVANDOWSKI INDIVIDUALLY  
12 IN THE ARBITRATION AT THE TIME, NOT OTTO TRUCKING.

13 **MR. PERLSON:** THEN WHY IS IT THAT UBER IS CONTACTING  
14 GOODWIN, OTTO TRUCKING'S COUNSEL, TO GET DOCUMENTS IN RELATION  
15 TO THIS LITIGATION?

16 **THE COURT:** WELL, THEY ARE CONTACTING GOODWIN AS  
17 MR. LEVANDOWSKI'S COUNSEL. WHY DO YOU SAY THEY ARE CONTACTING  
18 OTTO TRUCKING? I DON'T KNOW. I MEAN, THAT'S SORT OF MAKING A  
19 MESS OF THEIR OWN --

20 **MR. PERLSON:** YOUR HONOR --

21 **THE COURT:** WAIT. LET ME HEAR FROM MR. SCHUMAN.

22 **MR. SCHUMAN:** YOUR HONOR, GOODWIN DOES REPRESENT  
23 MR. LEVANDOWSKI IN THE ARBITRATION. MR. --

24 **THE COURT:** STILL?

25 **MR. SCHUMAN:** YES. MR. GONZALEZ'S DECLARATION FILED

1       IN RESPONSE TO THIS MOTION WE'RE HEARING, DOCKET 2018-3 EXPLAINS  
2       THIS.

3               UBER ASKED MR. LEVANDOWSKI TO TURN OVER HIS PERSONAL  
4       LAPTOPS. HE REFUSED ON THE GROUND OF HIS FIFTH AMENDMENT  
5       RIGHTS.

6               MR. GONZALEZ CALLED MY PARTNER, MR. CHATTERJEE -- WHO  
7       IS AT A MEDICAL APPOINTMENT TODAY, MR. PERLSON, SO THAT'S WHY HE  
8       CAN'T BE HERE, SINCE YOU MADE A POINT OF THAT -- AND ASKED THAT  
9       AS A COMPROMISE, WOULD WE RUN THOSE FOR UBER ON HIS PERSONAL  
10      LAPTOPS.

11               MR. PERLSON HAS MISCHARACTERIZED WHAT THE SEARCH  
12      INSTRUCTIONS WERE. IT'S ALL SET FORTH IN MR. GONZALEZ'S  
13      DECLARATION. IT WAS THE FILE NAMES. IT WAS HASH VALUES, YOU  
14      KNOW, THE UNIQUE MB5 IDENTIFIERS FOR THE FILES. AND THOSE  
15      RESULTS WERE PROVIDED TO UBER. AND THEY WERE PROVIDED IN --  
16      THEY WERE REVEALED IN MR. FAULKNER'S EXPERT REPORT AND AT THE  
17      DEPOSITION YOUR HONOR JUST HEARD ABOUT. ALL OF THIS WAS A LONG  
18      TIME AGO. THIS HAS NOTHING TO DO WITH THE STROZ DISCOVERY.  
19      THIS HAS NOTHING TO DO WITH THE STROZ REPORT.

20               **THE COURT:** NO. NO. NO, BUT THE STROZ REPORT  
21      REFERS TO ALL THE DOCUMENTS FOLLOWING. IT'S BROADER THAN THAT.  
22      RIGHT? IT'S THE FEDERAL CIRCUIT OPINION. AND MS. PADILLA'S  
23      E-MAIL WAS WITHHELD. SO I UNDERSTAND THAT ARGUMENT, BUT THAT'S  
24      TOO NARROW.

25               THE FACT OF THE MATTER IS THERE WAS A WHOLE TROVE OF

1 E-MAILS AND THE LIKE THAT WERE WITHHELD PENDING THE FEDERAL  
2 CIRCUIT'S OPINION. THEY RULED, AND THEN THEY WERE PRODUCED.

3 SO YOU KEEP SAYING THAT IN THE PAPERS.

4 **MR. SCHUMAN:** OKAY. I UNDERSTAND THAT. I  
5 UNDERSTAND IT WAS PUT IN THE PAPERS.

6 OKAY. SO WE MADE THE POINT IN THIS MOTION, AND SO  
7 WHAT MR. PERLSON WAS DOING WAS READING TO YOU FROM A DOCUMENT  
8 THAT THEY FILED ABOUT AN HOUR BEFORE WE GOT HERE TODAY WITH  
9 JUDGE ALSUP. THEY HAVE ENOUGH INFORMATION ABOUT THESE TWO  
10 LAPTOPS THAT THEY ARE FILING MOTIONS FOR RELIEF BEFORE JUDGE  
11 ALSUP.

12 WHAT IS BEFORE THIS COURT RIGHT NOW IS A MOTION FOR  
13 INSPECTION OF THE LAPTOPS. UBER, THE COURT HAS CORRECTLY SAID  
14 HAS RESPONDED THEY DON'T HAVE THEM. THEY DON'T KNOW WHERE THEY  
15 ARE.

16 OTTO TRUCKING, WE PUT IN OUR PAPERS, NEVER HAD THEM.  
17 OTTO TRUCKING NEVER HAD THEM. DON'T KNOW WHERE THEY.

18 GOODWIN, AS THE COURT KNOWS FROM THE PAPERS, HAD THEM  
19 FOR A BRIEF PERIOD OF TIME, RAN THESE SEARCHES AT UBER'S  
20 REQUEST. "WE DON'T HAVE THEM."

21 SO FOR PURPOSES OF INSPECTION OF THE LAPTOPS, THEY  
22 CAN'T GET THEM FROM ANY OF THE PEOPLE THAT THEY BROUGHT THIS  
23 MOTION TO. THEY WANT A DEPOSITION. IT'S NOT CLEAR AS TO WHOM.  
24 THE PAPERS DON'T ACTUALLY SAY THEY WANT THIS DEPOSITION OF --  
25 WELL, THEY DON'T SAY WHO THEY WANT IN DEPOSITION. IT JUST SAYS

1 "DEFENDANTS."

2                   THERE IS NO ADDITIONAL INFORMATION THAT THEY ARE  
3 GOING TO GET OUT OF THE DEPOSITION BEYOND WHAT IS IN THESE  
4 RESPONSIVE DECLARATIONS THAT WERE FILED IN OPPOSITION TO THIS  
5 MOTION.

6                   AND, OBVIOUSLY, YOUR HONOR, WE HAVE BRIEFED THE POINT  
7 ABOUT TRYING TO GET THE DEPOSITION OF OPPOSING LITIGATION  
8 COUNSEL IS IMPROPER.

9                   **MR. PERLSON:** YOUR HONOR, WHERE ARE THESE LAPTOPS?  
10 HOW CAN THEY NOT PROVIDE AN ANSWER TO THAT QUESTION? I FIND IT  
11 SHOCKING THAT COUNSEL HERE IS GOING TO TELL YOU THAT  
12 THEIR -- THAT THEIR -- THEY TOLD YOU WE MOVED TO COMPEL OTTO  
13 TRUCKING TO SAY -- TO HAVE THEM PRODUCE INFORMATION FROM  
14 LEVANDOWSKI. THEY SAID THEY CAN'T GETTING ANYTHING FROM  
15 LEVANDOWSKI BECAUSE OF THE FIFTH AMENDMENT.

16                   NOW, THEY ARE STANDING IN FRONT OF YOU SAYING THAT  
17 WHEN THEY ARE GOING ON THEIR HAT FOR MR. LEVANDOWSKI, THAT HE'S  
18 COOPERATING AND THAT THEY SOMEHOW -- MR. LEVANDOWSKI'S  
19 COOPERATING IN RELATION TO THE ARBITRATION IN PRODUCING  
20 DOCUMENTS IN THIS CASE. BUT THEN, WHEN THEY GO INTO THIS HAT,  
21 THEY DON'T KNOW ANYTHING ABOUT IT, AND THEY ARE OTTO TRUCKING,  
22 EVEN THOUGH ANTHONY LEVANDOWSKI OWNS OTTO TRUCKING.

23                   **THE COURT:** I UNDERSTAND THAT. THAT'S THE ONE  
24 QUESTION I HAD IS THAT THE REPRESENTATION, MR. SCHUMAN, AS OTTO  
25 TRUCKING'S COUNSEL. AND THE CONFUSION FRANKLY IS

1 MR. LEVANDOWSKI'S OWN DOING; THAT HE CHOSE TO HAVE OTTO TRUCKING  
2 AND HIMSELF REPRESENTED BY THE SAME ATTORNEY. BUT --

3 **MR. SCHUMAN:** WELL --

4 **THE COURT:** BUT, BE THAT AS IT MAY, HAS OTTO TRUCKING  
5 ASKED MR. LEVANDOWSKI, WHO IS, IN FACT, THE MANAGING AGENT OF  
6 OTTO TRUCKING FOR THE LAPTOPS?

7 **MR. SCHUMAN:** I THINK --

8 **THE COURT:** IF THE ANSWER IS "NO," THEN MAKE WHATEVER  
9 YOU WANT TO MAKE IN FRONT OF JUDGE ALSUP. BUT THERE IT IS.  
10 IT'S ALL LAID OUT THAT OTTO TRUCKING HASN'T DONE -- THIS IS WHAT  
11 YOU DID WITH UBER BEFORE -- OTTO TRUCKING HASN'T DONE IT. THEY  
12 HAVEN'T ASKED MR. LEVANDOWSKI FOR IT. THEY HAVEN'T DONE IT.  
13 THAT GOODWIN, AS LEVANDOWSKI, HAD IT, BUT DIDN'T TURN IT OVER.

14 THERE ARE THE FACTS. I DON'T THINK THERE'S ANY  
15 DISPUTE AS TO THE FACTS.

16 **MR. SCHUMAN:** THAT'S MY POINT.

17 **MR. PERLSON:** WE WANT TO KNOW WHERE IT IS. WE WANT  
18 TO INSPECT IT FOR OUR CASE. AND THEY ARE WITHHOLDING THE  
19 INFORMATION UNDER THIS RUSE, THAT ON THE ONE HAND THE EXACT SAME  
20 PEOPLE ARE REPRESENTING LEVANDOWSKI AND DOING WORK ON HIS BEHALF  
21 THAT DOESN'T INVOLVE THE FIFTH AMENDMENT. BUT THAT SOMEHOW WHEN  
22 THEY GET UP HERE IN THIS CASE AND TALK TO YOU THAT THEY CAN'T  
23 PROVIDE THIS INFORMATION BECAUSE THAT WORK, ON BEHALF OF OTTO  
24 TRUCKING'S OWNER, HAS NOTHING TO DO WITH THIS CASE.

25 **THE COURT:** WELL, DID YOU SUBPOENA THEM FROM

1 MR. LEVANDOWSKI?

2 **MR. PERLSON:** I DON'T UNDERSTAND.

3 **THE COURT:** THE DEVICE. THEY ARE HIS LAPTOPS.

4 **MR. BAKER:** OF COURSE WE SUBPOENAED MR. LEVANDOWSKI.  
5 THEY ARE WITHHOLDING IT ON THE FIFTH. BUT WE DIDN'T KNOW THAT  
6 GOODWIN HAD IT, AND THEY HID IT FROM US THAT THEY DID.

7 **THE COURT:** WELL, WAIT. IF YOU KNOW THAT, IF HE'S  
8 WITHHOLDING IT ON THE FIFTH, DOESN'T HE HAVE THEM?

9 **MR. PERLSON:** WE DON'T KNOW. WE ARE NOT -- WE DON'T  
10 KNOW WHAT IS WITHHELD, BECAUSE IT WAS ALL -- THE LOG WAS  
11 PROVIDED IN CAMERA. WE HAVE NO IDEA WHAT MR. LEVANDOWSKI IS  
12 HOLDING.

13 **THE COURT:** BUT I THOUGHT YOU SAID HE PRODUCED THE  
14 LOG. OKAY.

15 **MR. PERLSON:** NO, WE DON'T HAVE THE LOG. IT WAS  
16 PRODUCED IN CAMERA.

17 **THE COURT:** MR. SCHUMAN.

18 **MR. SCHUMAN:** YES, YOUR HONOR.

19 **THE COURT:** DOES GOODWIN HAVE THOSE LAPTOPS?

20 **MR. SCHUMAN:** NO, AND WE SAID THAT IN OUR PAPERS.

21 **MR. PERLSON:** THEY MUST HAVE PROVIDED THEM TO  
22 SOMEBODY. AND I THINK WE'RE ENTITLED TO KNOW THAT, BECAUSE  
23 GOODWIN IS OFFICERS OF THE COURT, AND THEY KNOW THAT THIS IS  
24 RELEVANT TO THE LITIGATION, AND THEY HAVE GOTTEN RID OF  
25 EVIDENCE.

1                   **THE COURT:** WHO DO YOU THINK HAS THEM IF UBER DOESN'T  
2 HAVE THEM AND GOODWIN DOESN'T HAVE THEM, DOESN'T MR. LEVANDOWSKI  
3 HAVE THEM?

4                   **MR. PERLSON:** I HAVE NO IDEA, YOUR HONOR.

5                   **THE COURT:** WELL, IS THERE SOMEBODY ELSE OUT THERE  
6 THAT YOU THINK HAS THEM.

7                   **MR. PERLSON:** THEY KNOW?

8                   **MR. SCHUMAN:** THAT'S NOT ACCURATE, BECAUSE YOU FILED  
9 SOMETHING WITH JUDGE ALSUP A COUPLE HOURS AGO SAYING IN WRITING  
10 "PRESUMABLY MR. LEVANDOWSKI HAS THEM."

11                  **MR. BAKER:** RIGHT. PRESUMABLY. I DON'T KNOW.  
12 THAT'S COMPLETELY CONSISTENT. I DON'T KNOW. BUT I GUESS HE  
13 MIGHT. BUT WHY DID THEY GIVE IT BACK TO HIM, AND WHEN DID THEY  
14 GIVE IT BACK. AND WHY --

15                  **THE COURT:** THAT'S NOT -- SEE, THAT'S AN ARGUMENT  
16 THAT YOU WANT TO MAKE TO JUDGE ALSUP ABOUT WHETHER -- INFERENCES  
17 TO BE DRAWN, I UNDERSTAND. THAT'S NOT A DISCOVERY DISPUTE.

18                  **MR. PERLSON:** WELL, I THINK WE'RE ENTITLED TO  
19 DISCOVERY TO FIND OUT WHAT WENT ON HERE WITH THIS STUFF THAT WAS  
20 HID FROM US ALL THIS TIME. AND OTTO TRUCKING IS THE ONE TO DO  
21 THAT? I THINK A 30 (B) (6) DEPOSITION IS APPROPRIATE TO FIGURE  
22 THAT OUT.

23                  **MR. SCHUMAN:** YOUR HONOR, OTTO TRUCKING, AS I SAID IN  
24 THE PAPERS, NEVER HAD THESE. I APPRECIATE THE COURT'S POINT.  
25 WE REPRESENTED MR. LEVANDOWSKI IN THE ARBITRATION. THEY HAD A

1 LAW FIRM IN THE ARBITRATION ALSO REPRESENTING WAYMO HERE, IF  
2 THAT CREATES SOME CONFUSION.

3 BUT THE REALITY IS OTTO TRUCKING HAD NO BUSINESS EVER  
4 TAKING THESE LAPTOPS, NEVER TOOK THE LAPTOPS, DOESN'T HAVE THE  
5 LAPTOPS. THERE'S NO DISCOVERY THEY CAN GET IN THAT 30 (B) (6)  
6 DEPOSITION BEYOND WHAT THEY KNOW ALREADY AND WHAT THE COURT  
7 KNOWS ABOUT WHAT OTTO TRUCKING'S RELATION TO THESE LAPTOPS ARE.  
8 THEY DON'T HAVE THEM.

9 TO YOUR HONOR'S PRIOR QUESTION --

10 **THE COURT:** WELL, OTTO TRUCKING NEVER ASKED THEM FOR  
11 THEM.

12 **MR. SCHUMAN:** NO, THAT'S NOT MY REPRESENTATION. I  
13 NEVER GOT TO ANSWER THE COURT'S QUESTION. AGAIN, THESE ARE NOT  
14 PAPERS THAT THE COURT WOULD HAVE HAD TIME TO REVIEW, AND I  
15 BARELY HAD TIME TO REVIEW THEM. BUT THIS IS THE POINT THEY ARE  
16 MAKING WITH JUDGE ALSUP. THEY HAVE MADE THIS POINT THAT  
17 MR. CHATTERJEE, ON OUR FIRM'S LETTERHEAD, MADE A REQUEST TO  
18 MR. LEVANDOWSKI AFTER THE PRELIMINARY INJUNCTION ORDER CAME  
19 DOWN, THEY POINTED THAT OUT TO JUDGE ALSUP.

20 WHAT WE REQUESTED -- IT'S IN A LETTER. IT'S A  
21 DOCUMENT. THEY HAVE IT. AND THEY ARE MAKING THAT POINT TO  
22 JUDGE ALSUP. THAT'S NOT FOR THIS DISCOVERY MOTION. THAT'S FOR  
23 THEIR SUBSTANTIVE ARGUMENTS THEY WANT TO MAKE TO JUDGE ALSUP.

24 **THE COURT:** OKAY. I'M JUST GOING TO TAKE IT UNDER  
25 SUBMISSION. I'M GOING TO TALK TO JUDGE ALSUP BECAUSE HE HAS

1 THAT ORDER MOTION IN FRONT OF HIM, AND FIGURE OUT WHAT HE WANTS  
2 TO DO OR NOT. IF HE WANTS TO DO IT UP THERE OR NOT.

3 **MR. PERLSON:** UNDERSTOOD, YOUR HONOR.

4 **THE COURT:** OKAY. THAT WAS THE COMPLICATED ONE, I  
5 THINK.

6 **MR. PERLSON:** YOUR HONOR, JUST FOR THE RECORD, WE DID  
7 FIRST ASK FOR INSPECTION ON MAY 22ND, JUST SO THE RECORD IS  
8 CLEAR.

9 **THE COURT:** OKAY. SO OTTOMOTTO DEVICES NEVER  
10 SEARCHED BY STROZ OR UBER, BUT IN ANY EVENT UBER REPRESENTS IT  
11 DID APPLY THE SEARCH TERMS TO THOSE DEVICES.

12 **MS. RIVERA:** CORRECT, YOUR HONOR. YOUR HONOR, I  
13 THINK THIS MIGHT BE ONE OF THOSE ISSUES WHERE ULTIMATELY THERE'S  
14 NO DISPUTE.

15 **MR. PERLSON:** I DON'T THINK THAT'S ACTUALLY WHAT THEY  
16 SAID. THEY SAID THAT THEY -- THE DEVICES THAT THEY LOOKED AT  
17 THAT THEY HAD, THAT THEY APPLIED THE SEARCH TERMS TO THEM. ALL  
18 WE'RE ASKING, FRANKLY, YOUR HONOR, IS THAT THEY GO BACK AND  
19 DOUBLECHECK BECAUSE OF THE ISSUE WITH THE DOMAIN.

20 I THINK IT'S FAIR TO SAY:

21 "HEY, WE UNDERSTAND YOU MADE A MISTAKE. GO BACK  
22 AND DOUBLECHECK THAT THERE AREN'T ANY UBER DEVICES OR OTTOMOTTO  
23 DEVICES THAT ARE SITTING AROUND THAT AREN'T BEING USED THAT YOU  
24 MIGHT NOT HAVE SEEN."

25 THAT'S IT. THAT'S ALL WE'RE ASKING.

1                   **MS. RIVERA:** YOUR HONOR, WITH RESPECT TO THE  
2 CONFLATION OF THE ISSUES WE'RE HERE TO TALK ABOUT TODAY AND THE  
3 MIGRATION ISSUE, THE ISSUE WITH MR. LEVANDOWSKI'S OTTO ACCOUNTS.  
4 THEY ARE TWO TOTALLY SEPARATE ISSUES, AS YOUR HONOR SAW IN THE  
5 DECLARATION THAT WE FILED AS TO MR. LEVANDOWSKI'S OTTOMOTTO  
6 ACCOUNT.

7                   THAT'S AN ISSUE THAT RESULTED AS A BYPRODUCT OF THIS  
8 MIGRATION THAT WAS BEING DONE OF E-MAILS FROM THE OTTOMOTTO  
9 DOMAIN TO THE UBER DOMAIN. THIS IS NOT IN THE PAPERS THAT WERE  
10 FILED WITH THE COURT.

11                  THAT IS IN THE DECLARATIONS THAT WERE FILED A COUPLE  
12 OF WEEKS AGO. IT'S OUR UNDERSTANDING THE ISSUE THERE HAD TO DO  
13 WITH THE FACT THAT MR. LEVANDOWSKI'S OTTO DATA WAS BEING  
14 MIGRATED TO THE E-MAIL ACCOUNT.

15                  **THE COURT:** NO. NO. I READ ALL THAT. WE DID ALL  
16 THAT. ALL THEY ARE SAYING IS THAT GIVEN THAT THAT WAS  
17 OVERLOOKED -- AT LEAST I DON'T FIND THAT IT WAS DONE  
18 INTENTIONALLY -- THEY ARE CONCERNED THAT PERHAPS OTHER THINGS  
19 WERE OVERLOOKED.

20                  CAN YOU JUST GO BACK AND MAKE SURE YOU DIDN'T  
21 OVERLOOK ANY OF THIS? THAT'S ALL THEY ARE SAYING.

22                  **MS. RIVERA:** SURE, YOUR HONOR. AND, ACTUALLY, I  
23 THINK I CAN TELL YOUR HONOR TODAY THAT CERTAINLY FOR PURPOSES OF  
24 THIS HEARING WE DID GO BACK. RIGHT?

25                  SO DURING THE COURSE OF THE MEETING AND CONFERRING,

1 WE VIEW THIS AS AN ISSUE THAT SHOULD HAVE BEEN RAISED, IF AT  
2 ALL, WAY BEFORE THE CLOSE OF DISCOVERY, AND DID NOT THINK THAT  
3 GIVEN THAT THESE ARE THINGS THAT THEY ASKED ABOUT IN DEPOSITION  
4 BEFORE THE CLOSE OF DISCOVERY, AND IF THEY HAD ANY CONCERNS  
5 ABOUT THIS THEY COULD FOLLOW-UP ON IT BEFORE THE CLOSE OF  
6 DISCOVERY.

7 WE DIDN'T THINK DURING THE COURSE OF THE MEET AND  
8 CONFERRING THAT IT WAS SOMETHING THAT JUSTIFIABLY UBER SHOULD BE  
9 REQUIRED TO GO BACK AND DO NOW. THAT IS GO BACK AND RECONFIRM.

10 I WILL TELL YOUR HONOR, THOUGH, FOR PURPOSES OF  
11 PREPARING FOR THIS HEARING WE DID GO BACK AND CONFER,  
12 PARTICULARLY WITH COUNSEL FOR A NUMBER OF THE DILIGENCE  
13 EMPLOYEES.

14 AND, OBVIOUSLY, I CAN'T TOTALLY DISCLOSE, YOU KNOW,  
15 WHAT WE DISCUSSED, FOR ATTORNEY/CLIENT PRIVILEGE REASONS. BUT  
16 AS I STAND HERE TODAY, I CAN TELL YOUR HONOR THAT WE BELIEVED AT  
17 THE TIME, AND STILL BELIEVE, THAT WE HAVE SEARCHED ALL OTTOMOTTO  
18 DEVICES THAT WERE ISSUED TO ANY OF THOSE DILIGENCE EMPLOYEES  
19 THAT WERE WITHIN UBER OR OTTOMOTTO'S POSSESSION, CUSTODY AND  
20 CONTROL.

21 **MR. PERLSON:** HAT'S NOT WHAT I WOULD THINK THEY WOULD  
22 DO, FRANKLY. I MEAN, THERE'S OTTO. THEY BOUGHT OTTO, AND THEY  
23 DON'T NEED TO GO TO THE DILIGENCE EMPLOYEES' COUNSEL TO FIND OUT  
24 WHAT WAS GOING ON. THEY ASK THEIR OWN EMPLOYEES TO MAKE SURE  
25 THERE'S NOTHING SITTING AROUND. THAT'S WHAT I WOULD EXPECT

1 THEM TO DO.

2                   **THE COURT:** OKAY. MR. PERLSON, I THINK THEY  
3 REPRESENTED THAT. I UNDERSTAND WHY THEY BROUGHT IT UP IN TERMS  
4 OF BEING OVERLOOKED. THEY SAID THEY HAVE NOT OVERLOOKED AND  
5 THEY SEARCHED EVERYTHING.

6                   **MR. PERLSON:** OKAY. WELL, I DON'T THINK WE'VE HAD  
7 THAT REPRESENTATION HERE SAID TODAY, BUT I UNDERSTAND YOUR  
8 HONOR'S RULING.

9                   **THE COURT:** ALL RIGHT. NOW, THE STROZ DRAFT. I  
10 GUESS THE DRAFTS OF THE STROZ REPORT. SO THEIR ATTORNEY WORK  
11 PRODUCT NOT WAIVED, BECAUSE THEY WEREN'T SHARED WITH MR.  
12 LEVANDOWSKI, WITH OTTOMOTTO BEFORE THE -- WELL, ACTUALLY, EVEN  
13 AFTER THE PURCHASE ACQUISITION THEY WEREN'T SHARED. SO JUST  
14 UBER'S WORK PRODUCT.

15                  **MR. JUDAH:** WELL, YOUR HONOR, FIRST OFF THE ACTUAL  
16 FINAL REPORT ITSELF WAS NOT SHARED BEFORE THE PUT CALL  
17 AGREEMENT, AND IT WAS STILL COMPELLED. AND SO I DON'T SEE WHY  
18 THE DRAFTS ARE ANY DIFFERENT.

19                  THIS WAS COMMISSIONED BY PARTIES THAT WERE ADVERSE.  
20 THE FINAL REPORT IS NOT PRIVILEGED OR PROTECTED. NEITHER ARE  
21 THE DRAFTS. BUT EVEN ASIDE FROM THAT, YOU KNOW, AT THE TIME  
22 THAT WE SERVED THE SUBPOENA AND UBER PROVIDED OBJECTIONS, AND WE  
23 FILED A MOTION TO QUASH --

24                  **THE COURT:** DON'T ARGUE TO ME THE PRIVILEGE LOG  
25 ISSUE, BECAUSE THEN I AM NOT PERSUADED. BUT WHAT YOU CAN ARGUE

1 IS WHETHER IT'S WORK PRODUCT OR NOT OR WHETHER IT FALLS WITHIN  
2 THE ORDER. THAT'S WHERE YOU SHOULD SPEND YOUR TIME.

3 **MR. JUDAH:** WELL, OKAY. WELL, LET ME JUST -- THE ONE  
4 THING I WOULD SAY IS THAT, YOU KNOW, THIS WAS NOT AN UNKNOWN  
5 CATEGORY OF INFORMATION. UBER HAD AN OPPORTUNITY TO ASSERT  
6 PRIVILEGE OVER -- TO SAY:

7 "THERE ARE DRAFTS, AND WE ARE ASSERTING  
8 PRIVILEGE AND WORK PRODUCT PROTECTION ON THOSE."

9 WITH RESPECT TO THE ACTUAL DRAFTS THEMSELVES, THIS IS  
10 MATERIAL THAT THE -- THAT STROZ ITSELF, IN PREPARING THE  
11 REPORT --

12 **THE COURT:** CAN YOU PUT YOUR PHONE DOWN? IT MAKES ME  
13 NERVOUS THAT IT'S GOING TO GO FLYING.

14 **MR. JUDAH:** I'M SORRY. I'M SORRY, YOUR HONOR.

15 STROZ, THE STROZ PERSONNEL WHO PREPARED THE FINAL  
16 REPORT THAT WAS SHARED WITH UBER THAT IS NOT PROTECTED BY ANY  
17 CLAIM OF PRIVILEGE, THESE ARE THE SAME PEOPLE WHO WERE WORKING  
18 ON THE DRAFT ITSELF. AND SO IT'S BASICALLY THE SAME RULING THAT  
19 WAS IN THE ORIGINAL MOTION. AND IT'S ALSO A CATEGORY -- AND I  
20 UNDERSTAND YOU DON'T FIND IT PERSUASIVE -- BUT IT'S A CATEGORY  
21 THAT WAS KNOWN TO UBER AT THE TIME THEY FILED EVERYTHING, EVEN  
22 ALSUP'S ORDER.

23 THEY SHOULD HAVE SAID:

24 "THERE ARE DRAFTS HERE. WE ARE CLAIMING  
25 PRIVILEGE OVER THEM."

1 IT WAS NOT AN UNKNOWN QUANTITY.

2 THE OTHER THING IS WE ASKED --

3 **THE COURT:** I DON'T KNOW IF THEY KNEW THERE WERE  
4 DRAFTS ANYMORE THAN YOU KNEW THERE WERE DRAFTS. YOU WOULD  
5 ASSUME THERE WERE DRAFTS.

6 **MR. JUDAH:** WELL, YOUR HONOR --

7 **THE COURT:** BUT YOU DIDN'T SAY:

8 "OH, THERE AREN'T ANY DRAFTS IN YOUR PRIVILEGE  
9 LOG, EITHER."

10 **MR. JUDAH:** WELL, YOUR HONOR --

11 **THE COURT:** WHICH YOU COULD HAVE THEN RAISED WITH ME  
12 BEFORE. RIGHT?

13 **MR. JUDAH:** WELL, YOUR HONOR, WE HAD NOT SEEN THE  
14 REPORT, UNLIKE UBER. I THINK SEEING THE REPORT, KNOWING WHAT IT  
15 IS, IT'S PRETTY OBVIOUS THERE WAS DRAFTS. BUT WE DIDN'T KNOW  
16 WHAT IT WAS. WE WERE NOT GETTING ANY INFORMATION. THAT WAS  
17 BEING CONCEALED.

18 THAT'S THE FIRST THING. THE SECOND THING IS WE ASKED  
19 THEM:

20 "ARE YOU WITHHOLDING ANY DRAFTS?"

21 AND THEY SAID: "NO," WHICH MADE SENSE.

22 AND THEN, IT TURNS OUT THEY WERE.

23 **THE COURT:** WHEN DID THEY SAY THAT?

24 **MR. JUDAH:** THEY SAID ON SEPTEMBER 21ST THAT THEY  
25 WERE NOT WITHHOLDING ANY DRAFTS. STROZ HAD SENT ALL THIS STUFF

1 TO UBER --

2                   **THE COURT:** THAT'S WHAT MR. GONZALEZ SAID.

3                   **MR. JUDAH:** YES. AND STROZ SENT EVERYTHING TO UBER  
4 AND SAID:

5                   WE'RE WILLING -- WE'RE READY TO PRODUCE THIS,  
6 AND LET US KNOW IF WE SHOULD WITHHOLD ANYTHING."

7                   AND UBER SAID:

8                   "GOT TO WITHHOLD THOSE."

9                   AND WE ASKED THEM ON SEPTEMBER 21ST TO CONFIRM THAT  
10 THERE WERE -- "ARE THERE DRAFTS? IF SO, WE WANT THEM."

11                  AND THEY SAID: "NO. WE ARE NOT WITHHOLDING ANY  
12 DRAFTS."

13                  **THE COURT:** CAN YOU REMIND ME WHAT EXHIBIT THAT IS?

14                  **MR. JUDAH:** SO MR. GONZALEZ --

15                  **THE COURT:** OKAY. I FOUND IT. IT'S EXHIBIT 6.

16                  MS. RIVERA, WHAT ABOUT THAT?

17                  **MS. RIVERA:** SURE, YOUR HONOR. WITH RESPECT TO  
18 EXHIBIT 6, IF YOUR HONOR ACTUALLY, YOU KNOW, LOOKS THROUGH AND  
19 READS THE WHOLE TRAIL OF E-MAILS, EXHIBIT 6 IS AN E-MAIL  
20 EXCHANGE THAT SPECIFICALLY HAD TO DO WITH THE SET OF PRIVILEGE  
21 LOGS THAT YOUR HONOR HAD ADJUDICATED BACK ON JUNE 26TH.

22                  THESE WERE NOT THE PRIVILEGE LOGS THAT WE PREPARED IN  
23 LATE AUGUST, EARLY SEPTEMBER FOR DOCUMENTS THAT WERE IN STROZ'S  
24 POSSESSION, WHICH IS THE PRIVILEGE LOG THAT RELATES TO THE  
25 DRAFTS OF THE STROZ REPORT.

1                   THIS E-MAIL EXCHANGE RELATE TO A REQUEST THAT WAYMO  
2 HAD MADE THAT UBER PROVIDE AN AMENDED VERSION OF THE LOG THAT  
3 YOUR HONOR HAD ADJUDICATED ON JUNE 26TH, WHICH WERE LOGS OF  
4 DOCUMENTS THAT WERE IN UBER'S POSSESSION, O'MELVENY'S OR  
5 MORRISON & FOERSTER'S, RELATED TO THE STROZ DILIGENCE.

6                   AND YOU SEE THE EXCHANGE THERE. BASICALLY, THEY ARE  
7 ASKING US TO CONFIRM WHEN WE'RE GOING TO BE PRODUCING THOSE  
8 AMENDED LOGS. AND THEN, THERE'S AN EXCHANGE BETWEEN MR. PERLSON  
9 AND MR. GONZALEZ, WHERE MR. PERLSON ASKED:

10                  "ARE YOU WITHHOLDING THE DRAFTS? PRESUMABLY ARE  
11 YOU WITHHOLDING ANY DRAFTS ON THE LOGS THAT ARE THE SUBJECT OF  
12 OUR E-MAIL EXCHANGE RIGHT HERE."

13                  MR. GONZALEZ RESPONDS:

14                  "NO, WE'RE NOT," WHICH WAS ACCURATE THEN AND  
15 CONTINUES TO BE ACCURATE TODAY AS TO THE PRIVILEGE LOGS THAT  
16 WERE BEING DISCUSSED IN THIS E-MAIL EXCHANGE.

17                  **THE COURT:** SAYS:

18                  "SYLVIA, ARE DEFENDANTS WITHHOLDING ANY DRAFTS  
19 OF THE DUE DILIGENCE REPORT?"

20                  HE ANSWERS:

21                  "WE ARE NOT WITHHOLDING ANY DRAFTS."

22                  **MS. RIVERA:** CORRECT. AND THE PRIVILEGE LOGS THAT  
23 ARE BEING DISCUSSED HERE ARE THE LOGS IF YOU LOOK ON -- IT'S  
24 INTERNAL PAGE NUMBER 2 OF THAT EXHIBIT.

25                  **THE COURT:** YEP.

1                   **MS. RIVERA:** THE E-MAIL FROM MELISSA BAILEY TOWARD  
2 THE BOTTOM OF THE PAGE.

3                   **THE COURT:** YES.

4                   **MS. RIVERA:** "APPROXIMATELY WHEN TOMORROW DO YOU  
5 EXPECT TO SEND THE AMENDED LOG? IN THE MEANTIME, CAN YOU  
6 IMMEDIATELY LET US KNOW THE BATES RANGE OF THE DOCUMENTS  
7 PRODUCED OFF OF THE MOFO, UBER AND OMM LOG?"

8                   **THE COURT:** WELL, PRESUMABLY AT THAT TIME YOU KNEW  
9 THERE WERE DRAFTS OF THE DUE DILIGENCE REPORT.

10                  **MS. RIVERA:** YOUR HONOR, WE HAD SERVED A PRIVILEGE  
11 LOG FOR THE DOCUMENTS THAT WERE IN STROZ'S POSSESSION, A  
12 PRIVILEGE LOG THAT I BELIEVE WAS ATTACHED AS AN EXHIBIT TO  
13 WAYMO'S PAPERS. IT'S A LARGE PRIVILEGE LOG. I CERTAINLY CAN'T  
14 SAY THAT I KNEW OR WAS COGNIZANT OF THE FACT THAT THERE WERE  
15 DRAFTS ON THAT PRIVILEGE LOG THAT HAS MULTIPLE, MULTIPLE --

16                  **THE COURT:** I'M NOT ASKING WHETHER YOU KNEW THEY WERE  
17 ON THE LOG. I'M ASKING WHETHER YOU KNEW THERE WERE DRAFTS OF  
18 THE STROZ REPORT.

19                  **MS. RIVERA:** AT THE TIME THAT THIS E-MAIL EXCHANGE  
20 OCCURRED, I CAN'T SAY THAT I WAS AWARE OR MR. GONZALEZ WAS  
21 AWARE. I CAN TELL THE COURT THEY WERE ON THAT STROZ PRIVILEGE  
22 LOG. SO, YOU KNOW, A CONTRACT ATTORNEY HAD REVIEWED IT AND PUT  
23 IT ON THE LOG.

24                  WHEN THESE E-MAILS WERE EXCHANGED, I CERTAINLY WASN'T  
25 COGNIZANT OF THE FACT THAT THERE WERE DRAFTS, AND I DON'T

1 BELIEVE MR. GONZALEZ WAS, EITHER.

2 BUT TO THE ULTIMATE QUESTION, YOUR HONOR, I  
3 INTERPRETED THIS E-MAIL EXCHANGE THEN AND TODAY AS HAVING TO DO  
4 WITH THE PRIVILEGE LOGS THAT WERE BEING DISCUSSED.

5 **THE COURT:** THAT'S WHY I'M CUTTING TO THE CHASE,  
6 BECAUSE THAT'S IMPROPER. WHEN SOMEBODY ASKS YOU:

7 "ARE YOU WITHHOLDING ANY DRAFTS OF STROZ'S  
8 DRAFTS," AND YOU SAY: "WE DON'T HAVE ANY. WE'RE NOT  
9 WITHHOLDING ANY DRAFTS," THAT'S NOT ON A LOG, WHATEVER, THAT'S  
10 ALREADY WITHHOLDING DRAFTS. SO THAT'S TOO NARROW. THAT IS WHY  
11 I'M JUST CUTTING TO IT. THAT WAS AN IMPROPER RESPONSE.

12 IF YOU DON'T KNOW, THEN YOU SAY YOU DON'T KNOW. BUT  
13 YOU DON'T MAKE AN AFFIRMATIVE REPRESENTATION THAT:

14 "WE ARE NOT WITHHOLDING ANY DRAFTS," WHEN, IN  
15 FACT, YOU ARE.

16 **MS. RIVERA:** I CONCEDE TO THAT, YOUR HONOR. SO I  
17 THINK BECAUSE NEITHER UBER NOR OTTOMOTTO KNOW ANY PARTY, THE  
18 LAWYERS ASSOCIATED WITH THEM HAD RECEIVED ANY DRAFTS OF THE  
19 STROZ REPORT, I THINK EVERYONE WHO SAW THIS E-MAIL AT THE TIME,  
20 AND CERTAINLY MR. GONZALEZ WHEN HE SENT IT, WERE NOT AWARE THAT  
21 THERE WERE ANY DRAFTS THAT WERE BEING WITHHELD ON THIS OTHER  
22 STROZ PRIVILEGE LOG.

23 **THE COURT:** WHAT ABOUT ANY DRAFTS THAT WERE CREATED  
24 PRIOR TO APRIL 11? WHY ARE THOSE WORK PRODUCT IN LIGHT OF MY  
25 RULING?

1                   **MS. RIVERA:** SO, YOUR HONOR, IF THEY WERE CREATED  
2 PRIOR TO APRIL 11, THOSE ARE NOT DOCUMENTS OVER WHICH WE HAVE  
3 ASSERTED PRIVILEGE. IF WHAT WE'RE TALKING ABOUT IS A DRAFT OF  
4 THE STROZ REPORT PRE-APRIL 11, YOU KNOW, SOMETIME AROUND 9:30 OR  
5 10:00 P.M., THAT WAS CUT OFF.

6                   **THE COURT:** SO THEY ARE NOT BEING WITHHELD.

7                   **MS. RIVERA:** NOT BEING WITHHELD. THE ONLY DRAFTS  
8 THAT ARE BEING WITHHELD ARE THOSE THAT CAME AFTER THAT DATE.

9                   **THE COURT:** SO WHY DIDN'T THAT FALL WITHIN MY ORDER?  
10 AT THAT POINT I RULED THAT THEY WERE -- THEY DID HAVE A COMMON  
11 INTEREST AT THE SAME TIME BECAUSE THERE WAS AN OBLIGATION TO  
12 PURCHASE AT THAT POINT.

13                  **MR. JUDAH:** WELL, YOUR HONOR, FIRST THE STROZ REPORT  
14 ITSELF WAS NOT PRIVILEGED BECAUSE IT WAS COMMISSIONED BY ADVERSE  
15 PARTIES, AND SO THE FINAL REPORT'S NOT PRIVILEGED.

16                  **THE COURT:** WELL, I DON'T KNOW IF IT WAS OR NOT.  
17 IT'S BEEN PRODUCED, APPARENTLY.

18                  **MR. JUDAH:** RIGHT.

19                  **THE COURT:** I DON'T KNOW IF IT WAS PRIVILEGED OR NOT.  
20 BUT I RULED THAT FOLLOWING APRIL 11, THAT THEY WERE ON THE SAME  
21 SIDE THE LEDGER, SO TO SPEAK. AND, THEREFORE, THEIR  
22 COMMUNICATIONS BETWEEN EACH OTHER, BETWEEN OTTOMOTTO AND UBER  
23 AND THEIR COUNSEL AND ALL THAT WERE PRIVILEGED. SO THAT'S WHAT  
24 I RULED. AS FAR AS I KNOW, THAT RULING HASN'T BEEN OVERTURNED  
25 AT THIS POINT.

1                   THAT'S THE LAW OF THE CASE. SO TELL ME IN LIGHT OF  
2 THAT RULING WHY IS IT NOT ATTORNEY WORK PRODUCT?

3                   **MR. JUDAH:** FOR THE SAME REASON THAT THE FINAL REPORT  
4 IS NOT. WELL, THAT WOULD BE OUR POSITION.

5                   **THE COURT:** OKAY. ALL RIGHT. SO THAT'S CIRCULAR.  
6 SO DO YOU WANT TO ARGUE TO ME ON THE MERITS WHY IN LIGHT OF MY  
7 RULING OF APRIL 11 IT'S NOT ATTORNEY WORK PRODUCT GIVEN THAT  
8 THEY WERE ESSENTIALLY CODEFENDANTS, WHATEVER YOU WOULD HAVE AT  
9 THE TIME? I MEAN, THAT WAS MY RULING.

10                  **MR. JUDAH:** WELL, SO, YOUR HONOR --

11                  **THE COURT:** ACTUALLY, I THINK YOU DID APPEAL AND IT  
12 WAS UPHELD. RIGHT?

13                  **MR. JUDAH:** I BELIEVE THAT'S CORRECT.

14                  **THE COURT:** OKAY. THAT'S THE LAW OF THE CASE.

15                  **MR. JUDAH:** SURE, YOUR HONOR. SO OKAY. SO, YOU  
16 KNOW, THE DRAFTS THEMSELVES -- AND, YOU KNOW, SURE. LET'S SAY  
17 THAT'S WORK PRODUCT.

18                  **THE COURT:** ALL THE TIME FINAL VERSIONS OF THINGS ARE  
19 NOT PRIVILEGED, LIKE AGREEMENTS. AND THE STUFF BEFORE THAT IS  
20 WORK PRODUCT. IT'S CLASSIC WORK PRODUCT.

21                  **MR. JUDAH:** UNDERSTOOD, YOUR HONOR. I MEAN, I  
22 UNDERSTAND WHAT YOU'RE SAYING. SO WE WILL NOT DISPUTE THAT THE  
23 STROZ DRAFTS, YOU KNOW, ARE WORK PRODUCT.

24                  **THE COURT:** NO. NO. NO. YOU CAN -- YOU CAN DISPUTE  
25 IF YOU WANT TO PRESERVE YOUR ARGUMENT.

1                   **MR. JUDAH:** SURE. WE'LL DISPUTE. THANK YOU. I  
2 APPRECIATE THAT.

3                   **THE COURT:** THAT'S PRESERVED.

4                   **MR. JUDAH:** OKAY. BUT I WON'T ARGUE THAT ANY  
5 FURTHER.

6                   WHAT I WOULD LIKE TO FOCUS ATTENTION ON IS THERE'S  
7 BEEN REPEATED WAIVERS.

8                   **THE COURT:** OKAY.

9                   **MR. JUDAH:** SO INCLUDING THE FACT THEY KNEW ABOUT IT  
10 DURING THE MOTIONS. THEY KNEW ABOUT IT DURING THE MOTION TO  
11 QUASH. THEY KNEW ABOUT IT, ALSUP'S, YOU KNOW, OBJECTIONS. HE  
12 EVEN SAID:

13                   "IF THERE'S ANYTHING -- YOU KNOW, SHOULD HAVE  
14 BEEN DONE ALREADY. AND YOU SHOULD ALSO GET IN SOMETHING NOW."  
15 THEY DON'T DO ANY OF THAT.

16                   **THE COURT:** WELL, WHAT ARE YOU -- I DON'T KNOW WHAT  
17 YOU'RE REFERRING TO.

18                   **MR. JUDAH:** WELL, YOUR HONOR, WE MENTION THIS IN THE  
19 ACTUAL MOTION ITSELF. SO, YOU KNOW, THE JUDGE -- THE JUDGE, YOU  
20 KNOW -- YOU COMPELLED EVERYTHING FROM THE STROZ REPORT. ALL THE  
21 ANALYSES AND ALL THE -- YOU KNOW, THE REPORTS AND ANALYSES THAT  
22 WERE COVERED BY THESE RFP'S AND SUBPOENAS 6, 7 AND 8.

23                   YOU COMPELLED EVERYTHING. UBER OBJECTED. AND THE  
24 JUDGE SAID:

25                   "ALL OBJECTIONS ARE OVERRULED."

1 AND HE SAID:

2 "I'M NOT GOING TO -- I'LL AGREE THAT IF THERE'S,  
3 YOU KNOW, HYPOTHETICAL DOCUMENTS THAT UBER HAD NO OPPORTUNITY,  
4 LIKE NEW PRIVILEGES THAT THEY COULDN'T HAVE REALIZED, I'LL GIVE  
5 YOU AN OPPORTUNITY FOR A PRIVILEGE LOG."

6 AND WE'RE ONLY GOING AFTER A VERY NARROW CATEGORY  
7 HERE, SOMETHING I DON'T THINK THEY CAN DISPUTE, THAT THEY WERE  
8 AWARE THAT THERE WERE DRAFTS OF THE STROZ REPORT.

9 SO THERE'S A WAIVER ALL THE WAY THROUGH THE TIME OF  
10 ALSUP'S ORDERS.

11 **THE COURT:** WELL, SO WHAT JUDGE ALSUP SAYS IS:

12 "IT DOES NOT APPEAR JUDGE CORLEY INTENDED HER  
13 ORDER TO HAVE ANY PRECLUSIVE EFFECT ON SUCH CLAIMS."

14 SO I'M JUST TELLING YOU CANDIDLY I DIDN'T THINK ABOUT  
15 DRAFTS AND HOW THAT -- WELL, BUT MY ORDER WAS -- BUT MY ORDER  
16 HAD TO DO WITH PRE-APRIL 11. SO THIS IS POST-APRIL 11. RIGHT?  
17 SO YOU CAN'T BE REFERRING TO THAT, BECAUSE MY RULING  
18 POST-APRIL 11 IS THAT THE PRIVILEGE WAS PRESERVED.

19 **MR. JUDAH:** WELL, YOUR HONOR, YOUR RULING ALSO SAID  
20 THAT --

21 **THE COURT:** SO I PRESERVED THAT ARGUMENT.

22 **MR. JUDAH:** WELL --

23 **THE COURT:** IN MY RULING I HELD THAT THERE WAS A  
24 WAIVER AS TO ATTORNEY/CLIENT WORK PRODUCT AND ATTORNEY/CLIENT  
25 PRIVILEGE, AND THE LIKE. AND THEN, I SUBSEQUENTLY CLARIFIED

1 THAT THAT WAS PRE-APRIL 11TH. AND THIS IS POST-APRIL 11, SO  
2 THIS SEEMS TO FALL SQUARELY WITHIN MY RULINGS. AND I THINK I  
3 CLARIFIED THAT POST THIS JUDGE ALSUP -- DO YOU KNOW THE DATE  
4 THAT I RULED ON THE APRIL 11 ISSUES?

5 **MS. RIVERA:** THE HEARING TOOK PLACE ON JUNE 23RD, AND  
6 YOUR HONOR'S WRITTEN ORDER WAS DATED JUNE 26.

7 **THE COURT:** THE DAY BEFORE THIS ORDER OF JUDGE ALSUP.  
8 MIGHT HAVE BEEN SHIPS PASSING IN THE NIGHT HERE.

9 **MR. JUDAH:** SO, YOUR HONOR --

10 **THE COURT:** SO GIVE ME A WAIVER ARGUMENT THAT COMES  
11 POST-JUNE 26.

12 **MR. JUDAH:** SO, FIRST OFF, THEY DIDN'T SUBMIT ANY  
13 PRIVILEGE LOG AT ALL UNTIL, I BELIEVE, SEPTEMBER 6TH. THAT'S  
14 THE FIRST THING.

15 SECOND THING IS: THEN THEY ADMIT THAT THEY  
16 OVERLOGGED STUFF, SO THEY END UP REMOVING THE AMENDED LOG IN  
17 LATE SEPTEMBER. IN THE INTERIM, WE ASKED:

18 "ARE YOU WITHHOLDING ANY DRAFTS?"

19 AND WE ASKED -- WE SAY -- AND WE DON'T SAY:

20 "ARE YOU WITHHOLDING ANY DRAFTS ON THE OMM  
21 PRIVILEGE LOG?"

22 THERE'S A SEPARATE E-MAIL. YOU'VE SEEN IT.

23 "SYLVIA, ARE DEFENDANTS WITHHOLDING ANY DRAFTS?"

24 THE RESPONSE: "NO, WE ARE NOT."

25 AND THEN, WE DON'T GET A RESPONSE FIRST. FIRST,

1 THERE'S NO RESPONSE.

2 AND THEN WE SAY:

3 "JOHN" -- SPECIAL MASTER -- "WE WOULD LIKE A  
4 MEET AND CONFER ON THIS."

5 AND THEN -- AND THEN, YOU KNOW, MR. GONZALEZ SAYS:

6 "THERE'S NO NEED FOR A MEET AND CONFER. CALL  
7 OFF THE MEET AND CONFER. WE'RE NOT WITHHOLDING ANY DRAFTS."

8 THAT'S A WAIVER. AND THEN --

9 **THE COURT:** WHY IS THAT A WAIVER? WHAT MAKES THAT A  
10 WAIVER?

11 **MR. JUDAH:** BECAUSE THEY REPRESENTED THAT THEY WERE  
12 NOT ASSERTING PRIVILEGE OR --

13 **THE COURT:** AND THEN, HOW MANY DAYS LATER YOU FOUND  
14 OUT THEY WERE?

15 **MR. JUDAH:** WELL, THEN, THEY SERVED THEIR AMENDED  
16 PRIVILEGE LOGS FOR ALL THE MATERIALS THEY HAD TOLD STROZ TO  
17 WITHHOLD SIX DAYS LATER, AND THAT'S WHEN --

18 **THE COURT:** OKAY. SO HOW ARE YOU PREJUDICED BY THAT  
19 SIX-DAY DELAY?

20 **MR. JUDAH:** WELL, THERE'S A LOT OF DISCOVERY THAT WAS  
21 GOING ON AT THAT TIME. THE DEADLINE TO FILE -- I'M LOSING  
22 TRACK OF WHICH -- WHICH --

23 **THE COURT:** I GUESS WHAT I'M GETTING AT IS YOU'RE  
24 HERE NOW MAKING YOUR ARGUMENT, THE SAME ARGUMENT YOU WOULD HAVE  
25 BEEN MAKING EARLIER IF MR. GONZALEZ HAD RESPONDED CORRECTLY:

1                             "WE ARE WITHHOLDING DOCUMENTS," BUT IT WOULD  
2 HAVE BEEN THE SAME ARGUMENT, WHICH IS WHY I JUST WANTED TO GET  
3 TO THE MERITS.

4                             **MR. JUDAH:** SURE, YOUR HONOR. AND SO FUNDAMENTALLY,  
5 SO LIKE THERE'S A WAIVER EARLIER. THERE'S WAIVER BY SEPTEMBER.  
6 AND THEN, THERE'S WAIVER AGAIN.

7                             **THE COURT:** WHAT'S THE WAIVER EARLIER?

8                             **MR. JUDAH:** WELL, SO -- I MEAN, THE WAIVER THAT IT  
9 WAS NOT MENTIONED IN THEIR OBJECTIONS. IT WAS NOT MENTIONED IN  
10 THEIR MOTION TO QUASH. IT WAS NOT MENTIONED THE FACT THAT THEY  
11 WERE CLAIMING PRIVILEGE OVER DRAFTS.

12                          **THE COURT:** BUT THEY WERE ALWAYS CLAIMING PRIVILEGE  
13 OVER EVERYTHING THAT WAS POST-APRIL 11.

14                          **MR. JUDAH:** YOUR HONOR --

15                          **THE COURT:** THEY CLAIMED PRIVILEGE OVER EVERYTHING,  
16 AS YOU TOLD ME MANY TIMES. ACTUALLY, MR. PERLSON. THEY  
17 WITHHOLD EVERYTHING. THEY WITHHELD EVERYTHING. RIGHT?

18                          **MR. JUDAH:** WELL --

19                          **THE COURT:** AND THEN, I ISSUED MY ORDER, AND I  
20 ALLUDED IN MY ORDER TO THIS APRIL 11TH DATE. AND THEN, I  
21 CLARIFIED THAT THE STUFF POST-APRIL 11 WAS PRIVILEGED.

22                          **MR. JUDAH:** YOUR HONOR, BUT IF I COULD DRAW YOUR  
23 ATTENTION TO YOUR ORDER, WHICH WE QUOTE IN OUR MOTION, YOU  
24 SPECIFICALLY ADDRESSED -- I MEAN, YOU ADDRESSED DIFFERENT  
25 CATEGORIES OF RFP'S. AND YOU WERE TALKING -- WHEN YOU'RE

1 TALKING ABOUT COMMUNICATIONS AS BETWEEN OR AMONG DIFFERENT  
2 MEMBERS OF THIS PURPORTED JOINT DEFENSE GROUP. YES,  
3 COMMUNICATIONS AFTER A CERTAIN POINT. YES, THEY ASSERTED WORK  
4 PRODUCT PROTECTION AND PRIVILEGE OVER COMMUNICATIONS.

5 SPECIFICALLY, THE REQUEST FOR PRODUCTION 6, 7 AND 8,  
6 YOU KNOW, WE ASKED FOR THE STROZ -- THIS IS YOUR ORDER.

7 "THE STROZ DUE DILIGENCE REPORT AND ANY OTHER  
8 REPORTS AND ANALYSES CREATED BY STROZ PURSUANT TO ITS RETENTION  
9 BY UBER AND OTTO."

10 THEN, YOU WRITE:

11 "OBJECTION TO THE COURT'S ORDER COMPELLING THE  
12 STROZ REPORTS'S PRODUCTION ARE CURRENTLY PENDING BEFORE THE  
13 DISTRICT COURT. NEITHER UBER NOR LEVANDOWSKI HAS IDENTIFIED ANY  
14 OTHER ANALYSES OR REPORTS AND THUS NEITHER HAS MET ITS/HIS  
15 BURDEN OF SHOWING THAT SUCH REPORTS OR ANALYSES ARE PRIVILEGED  
16 FROM PRODUCTION."

17 AND THEN, YOU ORDER:

18 "STROZ SHALL PRODUCE SUCH ANALYSES BY TUESDAY,  
19 JUNE 27, OR BY THAT SAME DATE ADVISE WAYMO THAT RESPONSIVE  
20 DOCUMENTS, OTHER THAN THE STROZ REPORT AND ITS EXHIBITS, DO NOT  
21 EXIST."

22 **THE COURT:** CAN YOU GIVE ME THAT DOCKET NUMBER?

23 **MR. JUDAH:** THAT IS YOUR ORDER, WHICH IS 670, DOCKET  
24 670 AT 9.

25 **THE COURT:** THANK YOU. NOW I REMEMBER THAT.

1           YES. SO, I MEAN, THAT DOES SEEM NOW -- THERE'S A  
2 LOT -- IT'S COMING BACK TO ME.

3           **MR. JUDAH:** THAT WAS THE WAIVER ARGUMENT I WAS TRYING  
4 TO MAKE; THAT I WANTED TO MAKE THE WHOLE TIME.

5           **THE COURT:** WELL, I DON'T KNOW ABOUT -- WELL, OKAY,  
6 BECAUSE THAT'S THE ONE I SAID: "OKAY."

7           **MS. RIVERA:** YOUR HONOR, SO UBER SUBSEQUENTLY FILED  
8 OBJECTIONS TO YOUR HONOR'S ORDER, WHICH JUDGE ALSUP OVERRULED.  
9 BUT AS YOUR HONOR MENTIONED A MOMENT AGO, IN HIS ORDER HE MADE  
10 CLEAR THAT YOUR HONOR'S ORDER, AS FAR AS HIS READING OF IT GOES,  
11 HAD NO PRECLUSIVE EFFECT ON NEW CLAIMS OF PRIVILEGE THAT UBER  
12 HAS HAD NO OPPORTUNITY TO ASSERT, BECAUSE THE ORDER DOES NOT  
13 CONTEMPLATE, MUCH LESS DECIDE, THAT WAIVER ISSUE.

14           AND THE WAIVER ISSUE THAT I'M SPEAKING TO YOUR HONOR  
15 IS UBER'S INABILITY TO ASSERT PRIVILEGE BY PREPARING A PRIVILEGE  
16 LOG FOR A DOCUMENT THAT IT DOES NOT KNOW EXISTS; DID NOT KNOW IT  
17 EXISTED AT THE TIME; AND DID NOT KNOW ABOUT, FRANKLY, UNTIL WE  
18 WERE GIVEN ACCESS TO MULTIPLE, MULTIPLE THOUSANDS OF DOCUMENTS  
19 THAT STROZ HAD TO FIRST GO THROUGH AND IDENTIFY WITHIN ITS  
20 RECORDS WHAT IT BELIEVED WAS RESPONSIVE TO THE SUBPOENA.

21           ONLY AFTER THAT DID IT MAKE THE MATERIAL AVAILABLE TO  
22 UBER, AND MORE SPECIFICALLY UBER'S COUNSEL FOR REVIEW. AND WE  
23 DEVOTED AN ABSOLUTE TON OF RESOURCES, YOUR HONOR, TO JUMP INTO  
24 THOSE DOCUMENTS AND TRY TO GET THEM REVIEWED AS QUICKLY AS  
25 POSSIBLE, SO THAT WE COULD PREPARE THE PRIVILEGE LOGS, WHICH WE

DID, WHICH WE SERVED, FRANKLY, IN THE WEE HOURS OF THE MORNING  
ON SEPTEMBER 17, JUST AS SOON AS IT WAS READY TO GO.

## **THE COURT:** HOW MANY DRAFTS ARE WE TALKING ABOUT AND WHAT ARE THE DATES?

**MS. RIVERA:** THE EARLIEST DRAFT, YOUR HONOR, THAT I HAVE SEEN IS DATED IN JULY. I CAN'T SAY FOR CERTAIN, YOUR HONOR, THAT THAT'S THE ABSOLUTE EARLIEST DRAFT. THAT IS THE EARLIEST ONE THAT I'M AWARE OF AS I STAND HERE TODAY.

**THE COURT:** WELL, YOU KNOW, BECAUSE --

**MR. JUDAH:** BASED ON THE PRIVILEGE LOG ENTRIES, WHICH I THINK YOU KNOW WAYMO'S OPINION ABOUT THE ACCURACY OF SOME OF THE DATES THAT ARE PROVIDED IN THE PAST. BUT BASED ON THAT IT LOOKS LIKE IT WAS MID-JULY.

**THE COURT:** SO THERE'S ONLY ONE DRAFT?

**MR. JUDAH:** NO. NO. THE EARLIEST DRAFT, I'M SAYING.

## **THE COURT:** HOW MANY DRAFTS ARE WE TALKING ABOUT?

**MR. JUDAH:** I DON'T KNOW, BASED ON THE PRIVILEGE LOG,  
WHETHER WE'RE TALKING ABOUT DUPLICATIVE ENTRIES. BUT I WANT TO  
SAY IT'S PROBABLY SOMETHING IN THE NEIGHBORHOOD OF 20, 10 TO 20.

**MS. RIVERA:** YOUR HONOR, I CAN'T PROVIDE MORE  
SPECIFICITY ON THE ABSOLUTE NUMBER OF DRAFTS OR HOW MANY OF THEM  
ARE DUPLICATES THAT WERE JUST E-MAILED TO ONE PERSON AND THE  
NEXT PERSON.

**THE COURT:** I GUESS I DON'T UNDERSTAND WHEN YOU SAY:

"WELL, WE ONLY GOT ACCESS ONCE."

1 STROZ IS YOUR AGENT. THAT'S BEEN THE ARGUMENT ALL  
2 ALONG. THEY ARE YOUR AGENT. THEY ESSENTIALLY ARE UBER. I  
3 MEAN, THAT I DON'T ACCEPT. YOU WERE PAYING THEM. THEY ARE YOUR  
4 AGENT.

5 **MS. RIVERA:** SO, YOUR HONOR, AS I UNDERSTAND -- AND I  
6 DON'T WANT TO SPEAK TOO MUCH TO STROZ'S PROCESS -- BUT THEY HAD  
7 A PROCESS THAT THEY HAD TO UNDERTAKE IN TERMS OF COLLECTING  
8 THESE E-MAILS AND DOING WHAT I ASSUME OR UNDERSTAND WAS A  
9 FORENSIC COLLECTION OF E-MAILS FROM THEIR TEAM.

10 I DON'T KNOW WHAT THEIR TOTAL UNIVERSE OF DOCUMENTS  
11 WAS THAT THEY WERE WORKING WITH, BUT THEY MADE AVAILABLE TO US  
12 OVER 10,000 THAT WE THEN HAD TO, YOU KNOW, START AT DOCUMENT  
13 NUMBER ONE AND LOOK THROUGH.

14 SO AS I MENTIONED A MOMENT AGO, YOUR HONOR, I  
15 ACTUALLY DIDN'T KNOW THAT THERE WERE DRAFTS OF THE STROZ REPORT  
16 UNTIL IT WAS, YOU KNOW, BROUGHT TO MY ATTENTION IN CONNECTION  
17 WITH THE MEET AND CONFER THAT WAYMO REQUESTED, BECAUSE WE WERE  
18 JUST DEALING WITH SO MANY DOCUMENTS. LIKE I SAID, OVER 10,000.

19 AND WE COULDN'T DO THAT REVIEW UNTIL STROZ FIRST WENT  
20 THROUGH AND FIGURED OUT WHAT IT WAS THEY WERE DEEMING TO BE  
21 RESPONSIVE TO THE SUBPOENA.

22 **THE COURT:** ALL RIGHT. I NEED TO GO BACK AND LOOK AT  
23 MY ORDER. AND THEN JUDGE ALSUP'S ORDER AND FIGURE OUT -- DID  
24 YOU WANT TO SAY SOMETHING?

25 **MS. WEBER:** WHITNEY WEBER, ON BEHALF OF STKROZ.

1                   SO JUST TO MAKE CLEAR FOR THE RECORD WHAT PROCESS  
2 HAPPENED, AS MS. RIVERA WAS EXPLAINING, THAT STROZ COLLECTED  
3 VARIOUS SOURCES OF INFORMATION AND REVIEWED IT FOR  
4 RESPONSIVENESS.

5                   AT THAT POINT IN TIME, AFTER WE MADE A RESPONSIVENESS  
6 DETERMINATION, WE PROVIDED THE DOCUMENTS THAT WERE DEEMED  
7 RESPONSIVE TO COUNSEL FOR UBER. AT THAT POINT IN TIME THEY WENT  
8 THROUGH THE DOCUMENTS.

9                   THAT DID NOT HAPPEN UNTIL -- GOSH, I DON'T WANT TO  
10 SAY THE EXACT DATE AND GET IT WRONG -- BUT IT WOULD HAVE BEEN IN  
11 THE MID-SUMMER TIME PERIOD. AND I BELIEVE THE DRAFTS WERE NOT  
12 SHARED WITH COUNSEL FOR UBER PRIOR TO THAT TIME PERIOD, SO THEY  
13 WOULD NOT HAVE KNOWN ABOUT THEM.

14                  **THE COURT:** OKAY. ALL RIGHT. WELL, I'LL GO THINK  
15 ABOUT IT. I MEAN, IT IS ATTORNEY WORK PRODUCT. IT'S NOT STUFF  
16 THAT YOU NORMALLY GET. IT'S NOT LIKE IF YOU ARE BEING DEPRIVED  
17 OF SOME RELEVANT EVIDENCE. WHAT YOU'RE TRYING TO DO IS GET THEM  
18 TO WAIVE AND GET SOMETHING THAT NORMALLY YOU DON'T HAVE YOUR  
19 HANDS ON.

20                  **MR. JUDAH:** YOUR HONOR, IF I COULD MAKE TWO QUICK,  
21 SHORT POINTS. THE FIRST IS THAT THIS IS NOT -- WE'RE NOT TRYING  
22 TO SEEK "GOTCHA" ABOUT THERE WAS SOME E-MAIL SOMEONE FROM STROZ  
23 SENT TO SOME RANDOM PERSON THAT UBER LEGITIMATELY COULDN'T HAVE  
24 KNOWN THAT EXACT COMMUNICATION, YOU KNOW, AT THE TIME WE SERVED  
25 OUR SUBPOENA. WE'RE TALKING ABOUT AN RPF THAT ASKS FOR ALL

1 REPORTS AND ANALYSES.

2                   **THE COURT:** BUT YOU DIDN'T ASK FOR THE DRAFTS.

3                   **MR. JUDAH:** WE SAID "ALL REPORTS AND ANALYSES."

4                   **THE COURT:** USUALLY, OFTEN PEOPLE SAY:

5                   "ALL REPORTS, ALL DRAFTS OF THE REPORTS" AND THE  
6 LIKE.

7                   **MR. JUDAH:** YOUR HONOR --

8                   **THE COURT:** RIGHT? RIGHT?

9                   **MR. JUDAH:** I'VE SEEN RFP'S LIKE THAT.

10                  **THE COURT:** YES.

11                  **MR. JUDAH:** BUT THE FACT THAT WE ASKED FOR THE  
12 ANALYSES, IT WAS SQUARELY IN THE RFP --

13                  **THE COURT:** THE REASON YOU DON'T ASK FOR THE DRAFTS  
14 IS DRAFTS ARE WORK PRODUCT. THAT'S WHY YOU DON'T DO IT. LIKE,  
15 THEY CAN'T ASK FOR DRAFTS OF YOUR BRIEFS OF THIS LETTER YOU  
16 SUBMITTED, RIGHT, BECAUSE IT'S WORK PRODUCT. EVEN THOUGH THE  
17 DRAFT IS HERE AND IT IS PUBLISHED. RIGHT?

18                  SO THAT'S JUST THE ARGUMENT, "WELL, THE FINAL IS  
19 THERE." THE FINAL IS THERE, THE FINAL AGREEMENT. BUT THE  
20 DRAFTS ARE CLASSIC. THEY ARE CLASSIC WORK PRODUCT.

21                  **MR. JUDAH:** YOUR HONOR, I CAN ASSURE YOU THAT IF THEY  
22 SUBPOENAED ALL OF QUINN EMANUEL'S ANALYSES IN THIS CASE, WE  
23 WOULD SAY:

24                  "WE ARE CLAIMING WORK PRODUCT PROTECTION AND  
25 PRIVILEGE OVER ALL DRAFTS."

1                   YES, WE SERVE STUFF. WE FILE STUFF OVER THE WIRE,  
2 ALL DRAFTS. AND UBER KNEW ABOUT THAT. THAT'S EXACTLY WHAT YOU  
3 SAID. THEY DIDN'T IDENTIFY ANYTHING.

4                   THE JUDGE, ALSUP, IDENTIFIED IN HIS ORDER OVERRULED  
5 ALL OBJECTIONS THAT THEY DIDN'T IDENTIFY ANY SPECIFIC CATEGORIES  
6 THAT WERE NOT ALREADY ON THE PRIVILEGE LOG.

7                   **THE COURT:** YES, I DO REMEMBER THAT. I HAVE TO GO  
8 BACK, BUT I WAS STRUCK BY THAT.

9                   **MS. RIVERA:** AND, YOUR HONOR, WHAT I CAN SAY, TOO, TO  
10 THAT IS SIMPLY THAT WE WERE NOT AWARE THAT THERE WERE DRAFTS.  
11 AND WE CERTAINLY WEREN'T AWARE OF THE DETAILS THAT WE WOULD NEED  
12 IN ORDER TO PREPARE A PRIVILEGE LOG. AS YOUR HONOR KNOWS, WAYMO  
13 HAS TAKEN US TO TASK WITH RESPECT TO THE LEVEL OF DETAIL IN OUR  
14 PRIVILEGE LOGS.

15                   ON SEPTEMBER 17TH WE PREPARED A LOG THAT INCLUDED ALL  
16 OF THE RELEVANT INFORMATION ABOUT WHO THESE DRAFTS WERE PREPARED  
17 BY, WHO THEY WERE CIRCULATED TO. IT WAS A VERY DETAILED  
18 PRIVILEGE LOG. THERE'S NO QUESTION THAT THAT'S INFORMATION THAT  
19 WE COULD NOT HAVE PROVIDED TO WAYMO OR YOUR HONOR UNTIL WE  
20 ACTUALLY DID THE REVIEW AND CAME ACROSS THESE DOCUMENTS.

21                   **THE COURT:** NO, BUT TO BE FAIR, YOU KNOW THERE'S A  
22 REPORT BECAUSE UBER, TO ITS CREDIT, BROUGHT THAT REPORT TO THE  
23 JUDGE'S ATTENTION. RIGHT? YOU BROUGHT IT TO THE JUDGE'S  
24 ATTENTION, SO YOU KNOW THE REPORT IS OUT THERE. SO YOU COULD  
25 HAVE EASILY KNOWN. IT'S AN EASY QUESTION:

1                             "ARE THERE ANY DRAFTS?"

2                             I MEAN, ACTUALLY, AT THAT POINT YOU'VE SEEN THE  
3 REPORT AND READ IT. IT'S PRETTY OBVIOUS FROM READING IT THAT  
4 THERE ARE LIKELY GOING TO HAVE BEEN DRAFTS. RIGHT?

5                             **MS. RIVERA:** WELL, NOT NECESSARILY, YOUR HONOR. I  
6 MEAN, WE PRESUMABLY WOULD HAVE KNOWN THAT THERE WAS LOTS OF  
7 COMMUNICATION BACK AND FORTH BETWEEN AND AMONG INDIVIDUALS AT  
8 STROZ. WE HAD ABSOLUTELY NO INSIGHT INTO WHAT THAT WAS OR WHAT  
9 IT LOOKED LIKE.

10                          AS SOON AS THOSE MATERIALS WERE MADE AVAILABLE TO US,  
11 YOU KNOW, WE HAD UPWARDS OF 15 CONTRACT ATTORNEYS THAT JUMPED ON  
12 THOSE DOCUMENTS TO START REVIEWING THEM TO FIGURE OUT WHAT IS IN  
13 THERE, WHAT ARE WE ASSERTING PRIVILEGE OVER, AND LET'S GET A  
14 PRIVILEGE LOG PREPARED ASAP.

15                          AND THAT'S EXACTLY WHAT WE DID.

16                          **THE COURT:** ALL RIGHT. WELL, I'LL JUST GO BACK.

17                          **MR. JUDAH:** YOUR HONOR, I JUST HAVE TWO QUICK POINTS.  
18 IF I CAN JUST MAKE THE SECOND ONE.

19                          TO THE EXTENT THIS IS WORK PRODUCT, I MEAN THESE  
20 REPORTS, I BELIEVE, ARE GOING TO HAVE A LOT OF FACT WORK  
21 PRODUCT.

22                          **THE COURT:** YOU HAVE ALL THE FACTS. YOU'VE GOT THE  
23 STUFF IN THE REPORTS. YOU'VE GOT EVERYTHING THAT THEY LOOKED  
24 AT.

25                          **MR. JUDAH:** WELL --

1                   **THE COURT:** WHAT IS GOING TO BE THERE IS OPINION.  
2 THAT'S WHAT IS GOING TO BE CUT OUT IS NUANCE OR THOSE KINDS OF  
3 THINGS.

4                   **MR. JUDAH:** YOUR HONOR, BASED ON THE INFORMATION WE  
5 HAVE, FOR EXAMPLE YOU COMPARE THE INTERVIEW SUMMARY WITH MR.  
6 LEVANDOWSKI --

7                   **THE COURT:** YES.

8                   **MR. JUDAH:** -- TO WHAT IS IN THE FINAL REPORT, AND  
9 CERTAIN MATERIAL THAT WAS IN THERE IS NOT INCLUDED IN THE  
10 REPORT. YOU KNOW --

11                  **THE COURT:** BUT YOU GOT THE INTERVIEW SUMMARY BECAUSE  
12 IT WAS ATTACHED. IT WAS AN EXHIBIT TO THE REPORT.

13                  **MR. JUDAH:** SURE. WE HAVE THAT. BUT IT SEEMS LIKE  
14 THE ELEMENTS THAT WOULD HAVE BEEN EVEN MORE DAMAGING TO UBER  
15 LOOK THEY MAY NOT HAVE MADE IT INTO THE FINAL REPORT, AND THEY  
16 MAY BE IN THE DRAFTS.

17                  **THE COURT:** WHY DAMAGING TO UBER? THEY WEREN'T  
18 INVESTIGATING UBER. THEY WERE INVESTIGATION MR. LEVANDOWSKI.

19                  **MR. JUDAH:** YEAH. WELL, WERE DAMAGING TO OTTOMOTTO,  
20 I SUPPOSE. BUT DAMAGING TO UBER'S CASE, WHICH IS WHY THEY ARE  
21 TRYING TO CONCEAL IT, IS WHAT I'M SAYING.

22                  **THE COURT:** IT IS ATTORNEY WORK PRODUCT PRIVILEGE.  
23 RIGHT?

24                  **MR. JUDAH:** TO THE EXTENT IT IS, IT WOULD BE MOST OF  
25 THAT IS FACT --

1                   **THE COURT:** I GUESS WHAT I'M TAKING ISSUE WITH IS  
2 THEY ARE TRYING TO CONCEAL IT BECAUSE IT'S DAMAGING TO THEIR  
3 CASE. RIGHT?

4                   **MR. JUDAH:** WELL, I WOULD SAY WE HAVE A SUBSTANTIAL  
5 NEED BECAUSE WE HAVE A LOT OF PRIVILEGE OBJECTIONS OVER ALL THE  
6 ANALYSIS THAT WAS DONE AFTER APRIL 11, OTHER THAN WHAT IS IN THE  
7 FINAL REPORT. SO I THINK WE HAVE A SUBSTANTIAL NEED FOR A LOT  
8 OF THE INFORMATION, INCLUDING THE FACT WORK PRODUCT THAT IS IN  
9 THESE DRAFT REPORTS.

10                  **THE COURT:** I MEAN -- WELL, I DON'T KNOW IF THERE IS  
11 FACT WORK PRODUCT IN THE DRAFT REPORT. I MEAN, AND MAYBE YOU  
12 HAVE A SUBSTANTIAL NEED WITH RESPECT TO THERE'S SOMETHING AS TO  
13 MR. LEVANDOWSKI THAT'S IN THERE AS TO WHAT HE SAID, BECAUSE HE'S  
14 NOT COOPERATING.

15                  **MS. RIVERA:** SO, YOUR HONOR, WITH RESPECT TO THE  
16 DRAFTS AND THE POINT ABOUT THE SUBSTANTIAL NEED, WHAT WE'RE  
17 TALKING ABOUT HERE IS WAYMO'S SPECULATION THAT THERE WERE DRAFTS  
18 THAT WERE, I GUESS, MORE, I THINK -- USE THE TERM "DAMAGING" TO  
19 UBER OR DAMAGING TO OTTOMOTTO. THAT'S PURE SPECULATION. THE  
20 POINT THEY MADE IN THEIR PAPERS THAT THEY HAVE REASON TO BELIEVE  
21 THAT THAT'S THE CASE, BUT THEY DEPOSED FOUR INDIVIDUALS FROM  
22 STROZ.

23                  THERE'S BEEN DIRECT TESTIMONY FROM PERSONNEL AT STROZ  
24 TO THE EFFECT THAT UBER AND OTTOMOTTO WANTED AN INDEPENDENT AND  
25 ROBUST INVESTIGATION. THERE'S BEEN A DIRECT REPRESENTATION OF

1 THE IDEA THAT UBER IN ANY WAY URGED, YOU KNOW, A WATERED DOWN  
2 VERSION OF THE FACTS. SO THAT PART IS AT THIS POINT PURE  
3 SPECULATION. THAT'S NOT AT ALL SUPPORTED BY THE RECORD.

4 AND TO YOUR HONOR'S POINT, THEY DO HAVE ALL THE FACT  
5 WORK PRODUCT. THEY HAVE THE INTERVIEW MEMOS. THEY HAVE THE  
6 UNDERLYING FORENSIC ANALYSIS. WHAT WE'RE TALKING ABOUT HERE IS  
7 PURE OPINION WORK PRODUCT.

8 **THE COURT:** I DON'T KNOW. I HAVEN'T SEEN IT. BUT I  
9 DON'T KNOW. MAYBE LET ME GO BACK AND LOOK AT THOSE ORDERS AND  
10 SEE. AND IF I HAVE A QUESTION THEN I MAY ASK YOU TO JUST SUBMIT  
11 THEM TO ME IN CAMERA. I'M NOT PREPARED TO DO THAT.

12 **MR. JUDAH:** YOUR HONOR, MR. PERLSON MADE A GOOD POINT  
13 THAT I WOULD BE REMISS IF I DIDN'T POINT OUT, WHICH IS I WOULD  
14 BE ASTONISHED IF ON THE PRIVILEGE LOG OF UBER AND MOFO ATTORNEYS  
15 THERE WASN'T SOME COMMUNICATION WITH MR. STROZ SAYING:

16 "WE HAVE A DRAFT IN PROGRESS. WE HAVE A DRAFT,  
17 BUT WE ARE STILL WORKING ON IT."

18 THE NOTION THAT THE LAWYERS AT MOFO WHO WERE  
19 COMMUNICATING WITH STROZ DIDN'T KNOW THAT THEY WERE WORKING ON  
20 DRAFTS? AND THAT CONTEMPORANEOUSLY WHILE THEY ARE COMMUNICATING  
21 WITH STROZ, THEY DIDN'T KNOW THAT DRAFTS EXISTED AND WERE  
22 WORKING ON THE DRAFTS?

23 I FIND THAT INCREDIBLE, ALTHOUGH I HAVE NOT SEEN --

24 **THE COURT:** WHAT DID STROZ SAY WHEN YOU DEPOSED THEM?

25 **MR. JUDAH:** WE GOT PRIVILEGE OBJECTIONS ON ANYTHING

1 AFTER APRIL 11TH.

2                   **MS. RIVERA:** THE LAST ISSUE HERE, YOUR HONOR -- AND  
3 YOU TOUCHED ON THIS A MOMENT AGO WITH RESPECT TO THE E-MAIL  
4 EXCHANGE OF SEPTEMBER 21ST WAS THERE'S NO PREJUDICE HERE. WE  
5 HAVE ACTED IN GOOD FAITH. WITH RESPECT TO THAT SEPTEMBER 21ST  
6 E-MAIL EXCHANGE, YOUR HONOR, I UNDERSTAND WHAT YOUR HONOR SAID,  
7 AND I CAN TELL YOUR HONOR THAT THAT WASN'T MY INTERPRETATION.  
8 BUT IT MAY HAVE BEEN BECAUSE I WAS, YOU KNOW -- WE WERE IN THE  
9 THROES OF PREPARING THOSE AMENDED LOGS, AND THAT'S WHAT WE WERE  
10 THINKING ABOUT.

11                  BUT WITH RESPECT TO THE ULTIMATE ISSUE OF: ARE THESE  
12 DRAFTS WORK PRODUCT? YOU KNOW, I THINK IT'S UNQUESTIONABLE THAT  
13 THEY ARE. AND IN TERMS OF WHAT THE PREJUDICE IS, YOU KNOW, HAD  
14 WE ASSERTED BACK IN JUNE THAT:

15                  "BY THE WAY, WE SUSPECT THAT THERE MIGHT BE SOME  
16 DRAFTS, OVER WHICH, YOU KNOW, IF THEY DO EXIST, WE'RE GOING TO  
17 ASSERT PRIVILEGE," I DON'T UNDERSTAND WHAT DIFFERENT POSITION --

18                  **THE COURT:** I UNDERSTAND. I'LL GO BACK AND LOOK.

19                  BUT NOW IT'S BEEN A LONG TIME. BUT -- AND WE ALL  
20 FORGET -- BUT AT THE BEGINNING OF THIS CASE OF THESE ISSUES  
21 THINGS WERE SORT OF BEING PULLED OUT OF UBER. RIGHT? WELL,  
22 FIRST THE TERM SHEET, AND THEN EVERYTHING OUT. AND SO THAT MAY  
23 HAVE BEEN WHAT WAS IN MY MIND OR WHAT I WAS REFERRING TO.

24                  BUT I'LL GO BACK AND LOOK AT THEM, AS I SAID. AS I  
25 SAID, I'LL DO THAT. I DON'T THINK THERE'S ANY PREJUDICE. WHAT

1       THEY ARE TRYING TO GET IS SOMETHING YOU DON'T NORMALLY GET IN  
2 LITIGATION THAT YOU'RE NOT ENTITLED TO; THAT THERE'S NO -- YOU  
3 KNOW, YOU HAVE TO TRY YOUR CASE WITHOUT IT IS NOT AN INJUSTICE  
4 IN THAT SENSE.

5                  BUT THERE ARE CERTAIN RULES THAT APPLY AND CERTAIN  
6 RULINGS THAT HAVE BEEN MADE, AND SO I'LL GO BACK AND SEE HOW  
7 THEY FIT TOGETHER AND I'LL TAKE A LOOK AT THEM. OKAY.

8                  **MR. JUDAH:** THANK YOU, YOUR HONOR.

9                  **THE COURT:** THANK YOU.

10                 OKAY. THEN, LET'S SEE. LET ME LOOK AT MY NOTES.

11                 OKAY. THE SOFTWARE WILL WAIT, AND WE'LL SET A  
12 BRIEFING ON THAT MOTION. I'LL DECIDE THAT ALL TOGETHER.

13                 AND THEN, THE LAST ONE THEN IS -- WELL, I THINK THIS  
14 IS TAKEN CARE OF NOW. THE LEVANDOWSKI, WHAT THEY CALL THE  
15 69,000 SLIVER.

16                 AH, SOMEONE NEW. YAY. GOOD AFTERNOON.

17                  **MS. ROBERTS:** GOOD AFTERNOON. HOPE YOU'RE STILL  
18 EXCITED AFTER I SPEAK.

19                  **THE COURT:** I'M EXCITED TO HAVE YOU SPEAK, BRING  
20 SOME -- I'M NOT GOING TO COMMENT ON IT. OKAY.

21                  **MS. RIVERA:** AND I APOLOGIZE. IT'S STILL ME, YOUR  
22 HONOR, FOR UBER.

23                  **THE COURT:** YOU CAN STATE YOUR APPEARANCE.

24                  **MS. ROBERTS:** ANDREA ROBERTS.

25                  **THE COURT:** ROBERTS. ALL RIGHT, MS. ROBERTS. OKAY.

1 SO AS I UNDERSTAND IT, UBER -- NOT UBER -- WAYMO WOULD LIKE TO  
2 KNOW IN AN ADMISSIBLE FORM WHERE THOSE IMAGES -- MOSTLY WHAT  
3 WE'RE TALKING ABOUT, 69,000 CAME FROM.

4 MOFO, MS. RIVERA, HAS SAID IN A DECLARATION THAT THEY  
5 CAME FROM THE MACBOOK. ALSO STROZ'S COUNSEL SAID THE SAME  
6 THING.

7 SO IF WE HAVE AN AGREEMENT -- NOW, I UNDERSTAND THAT  
8 MOFO DISPUTES THAT UBER SHOULD BE RESPONSIBLE FOR THAT. THAT'S  
9 NOT A DISCOVERY ISSUE. THAT'S AN INFERENCE, TRIAL ISSUE, I  
10 THINK, FOR JUDGE ALSUP. BUT AS FOR A DISCOVERY ISSUE, WHY ISN'T  
11 WHAT THEY PROVIDED, ASSUMING WE AGREE THAT THAT'S ADMISSIBLE,  
12 ADMISSIBLE? THAT'S WHERE IT CAME FROM, HIS MACBOOK.

13 **MS. ROBERTS:** SO I THINK IT COMES A LITTLE -- A  
14 LITTLE SHORT FROM WHAT WE NEED TO BE ADMITTED AT TRIAL. WE HAVE  
15 A SET OF DOCUMENTS. THESE DOCUMENTS, MOSTLY PHOTOS, WERE MADE  
16 AVAILABLE FOR INSPECTION BY US AFTER WE GOT THE FEDERAL CIRCUIT  
17 ORDER.

18 WE WENT TO MORRISON & FOERESTER, IDENTIFIED THE ONES  
19 WE WANTED PRINTED. THEY WERE PRINTED AND PRODUCED WITH BATES  
20 NUMBERS.

21 I THINK WHAT WE WANT IS FOR THAT SET OF DOCUMENTS FOR  
22 MOFO TO AUTHENTICATE THAT THIS SET OF DOCUMENTS WERE PROVIDED TO  
23 US BY STROZ, RATHER THAN THE SORT OF VAGUE LANGUAGE, THE MOFO  
24 SLIVER, IS NOT ENTITLED TO SPECIFIC DOCUMENTS THAT WE WILL BE  
25 USING AT TRIAL.

1                   AND, YOU KNOW, IF THEY CAN ALSO ATTEST TO THE FACT  
2 THAT THEY CAME FROM THE MACBOOK --

3                   **THE COURT:** YOU'LL BE ATTEMPTING TO USE AT TRIAL.  
4 THEY WILL ARGUE THAT YOU SHOULDN'T BE.

5                   **MS. ROBERTS:** CERTAINLY, YOUR HONOR.

6                   **THE COURT:** I'LL MAKE IT CLEAR. IT'S NOT A RULING  
7 THAT THEY GET TO USE THEM FOR THE PURPOSE THAT THEY WANT, BUT  
8 JUST WHY ISN'T THAT --

9                   **MS. RIVERA:** SURE. SO, YOUR HONOR, TWO THINGS. WE  
10 HAVE NO PROBLEM SAYING THAT. WHEN I SAY "WE," TO BE CLEAR,  
11 SPEAKING ON BEHALF OF MORRISON & FOERSTER. IT WAS MORRISON &  
12 FOERSTER WHO RECEIVED THESE AT THE TIME WE WERE COUNSEL FOR  
13 MR. LEVANDOWSKI IN THE ARBITRATION, AND WE RECEIVED IT FROM  
14 STROZ IN OUR CAPACITY AS COUNSEL FOR MR. LEVANDOWSKI, NOT IN OUR  
15 CAPACITY AS COUNSEL FOR UBER.

16                   I THINK IT'S CLEAR FROM THE PAPERS, AND YOUR HONOR  
17 UNDERSTANDS THAT. I JUST WANTED TO RECORD TO BE CLEAR.

18                   HAVING SAID THAT, WE HAVE NO PROBLEM SAYING THAT  
19 MORRISON & FOERSTER RECEIVED THE MATERIALS FROM STROZ. THAT'S  
20 SOMETHING THAT WE HAVE DIRECT FIRSTHAND KNOWLEDGE OF. WHAT WE  
21 CAN'T DO IS SPEAK TO THE PROVINCE OF THESE MATERIALS WITH  
22 RESPECT TO WHICH SPECIFIC DEVICE OF MR. LEVANDOWSKI THEY CAME  
23 FROM.

24                   ALL WE CAN DO IS TELL WAYMO AND TELL YOUR HONOR WHAT  
25 COUNSEL FOR STROZ HAS TOLD US. I HAVE NO REASON TO DOUBT THAT

1 IT'S TRUE. I BELIEVE IT TO BE THE CASE.

2 **THE COURT:** OKAY.

3 **MS. RIVERA:** BUT IN TERMS OF SIGNING A DECLARATION --

4 **THE COURT:** NO, I UNDERSTAND. BUT WILL YOU AGREE,  
5 THEN, THAT YOU WON'T MAKE A HEARSAY OBJECTION TO THEIR OFFERING  
6 WHAT YOU SAID? IN OTHER WORDS, I MEAN, YOU COULD -- RIGHT? YOU  
7 SAID YOU HAVE NO REASON.

8 OR I HAVE COUNSEL FOR STROZ HERE? THEY CAN JUST SIGN  
9 THE STIPULATION THAT SAYS IT CAME FROM THE MACBOOK. RIGHT?

10 **MS. RIVERA:** SURE. I HESITATE ONLY BECAUSE I'M NOT  
11 SURE WHAT MY -- WHAT MY COLLEAGUES ON OUR TRIAL TEAM WOULD SAY  
12 IN RESPONSE TO ME MAKING CONCESSIONS THAT --

13 **THE COURT:** AH, WHAT YOU CAN SAY IS:

14 "YOU SHOULD HAVE BEEN AT THE HEARING."

15 **MS. RIVERA:** WELL, I'LL HAVE TO NOTE THIS PART OF THE  
16 TRANSCRIPT, YOUR HONOR, SO I CAN SHOW IT TO THEM.

17 **THE COURT:** YES.

18 **MS. RIVERA:** BUT TO YOUR POINT, YOUR HONOR, AGAIN, NO  
19 PROBLEM WITH STANDING BY WHAT I SAID IN MY DECLARATION, WHICH  
20 IS:

21 "LOOK, WE TALKED TO COUNSEL FOR STROZ. THEY  
22 INFORMED US THAT ACCORDING, YOU KNOW, TO THEIR INVESTIGATION  
23 THESE MATERIALS CAME FROM MR. LEVANDOWSKI'S MACBOOK COMPUTER,  
24 WHICH STROZ COLLECTED DURING THE DUE DILIGENCE AND STILL HAS.

25 THE FOLLOW-UP TO THAT POINT, THOUGH, IS THAT WAYMO

1 HAS ACCESS TO THAT COMPUTER, AND THEY HAVE BEEN INSPECTING IT.

2                   **THE COURT:** OH, YEAH. WHAT ABOUT THAT? THEY SAID  
3 THAT --

4                   **MS. RIVERA:** SO THEY --

5                   **THE COURT:** -- THE FORENSIC IMAGE YOU HAVE THAT THEY  
6 WOULD ALL BE THERE.

7                   **MS. RIVERA:** SO THEY CAN GET THESE PHOTOS DIRECTLY  
8 FROM THAT DEVICE.

9                   **MS. ROBERTS:** SO THE CHALLENGE WITH THESE PHOTOS --  
10 AND I --

11                  **THE COURT:** IS THAT YOU CAN'T SEARCH FOR THEM.

12                  **MS. ROBERTS:** EXACTLY. I SUSPECT THAT'S WHY MOFO HAD  
13 THEM SEGREGATED.

14                  **THE COURT:** I REMEMBER THAT.

15                  **MS. ROBERTS:** BECAUSE WHEN WE WANT TO GO FIND THEM IN  
16 THE DATABASE WE CAN'T JUST RUN --

17                  **THE COURT:** LOOK, LET'S JUST CUT TO THE CHASE. YOU  
18 PUT IT IN YOUR DECLARATION. YOU PUT IT IN YOUR LETTER,  
19 THEREFORE -- AND YOU DIDN'T WITHHOLD AND SAY:

20                         "BUT WE'RE GOING TO MAKE A HEARSAY OBJECTION."  
21 YOU DID PRESERVE ABSOLUTELY YOUR OBJECTION THAT UBER SHOULD  
22 SOMEHOW BE CHARGED WITH THAT POSSESSION OR KNOWLEDGE.  
23 ABSOLUTELY PRESERVED.

24                         BUT IN TERMS OF THE FACT THAT IT CAME FROM THE  
25 MACBOOK, YOU PUT IT OUT THERE. SO WHAT I WOULD SAY IS YOU GET

1 IT TO THEM, THAT WHATEVER SLIVERS OF THE SLIVERS THEY WANT YOU  
2 TO SAY COME FROM THAT MACBOOK, OR I'LL LET THEM TAKE A  
3 DEPOSITION, ANOTHER DEPOSITION OF STROZ, AND THEY CAN JUST ASK  
4 THEM DIRECTLY AND HAVE THEM AUTHENTICATE IT DIRECTLY.

5 THAT WAY SEEMS LIKE A WASTE TO EVERYBODY'S TIME, BUT  
6 JUST SEE IF YOU CAN GET TO A STIPULATION.

7 **MS. ROBERTS:** AND, YOUR HONOR, I THINK WE CAN WORK  
8 TOWARDS THAT. I WOULD ADD I THINK IT'S A TWO-STEP PROCESS. I'M  
9 NOT SURE THAT STROZ CAN VERIFY THAT PRECISELY WHAT WE PRINTED OR  
10 REQUESTED BE PRINTED FROM MOFO ARE THE MATERIALS THAT CAME FROM  
11 THEM.

12 I THINK WE NEED THE REPRESENTATION FROM MOFO THAT  
13 THESE ARE MATERIALS THAT THEY RECEIVED FROM STROZ, AND THEY CAN  
14 SAY THAT STROZ SAID THAT THEY CAME FROM THE MACBOOK, IF THAT'S  
15 WHAT THEY KNOW.

16 I'M CONCERNED IF WE LEAVE IT ALL TO STROZ THAT STROZ  
17 WILL SAY:

18 "WELL, WE DON'T KNOW WHAT WAS ON THAT COMPUTER."

19 **THE COURT:** YOU UNDERSTAND.

20 **MS. RIVERA:** I UNDERSTAND THE POINT, YOUR HONOR. AND  
21 I THINK WE CAN PROBABLY EITHER DO IT IN A TWO-STEP PROCESS OR  
22 JUST HAVE MOFO DO IT, BUT DO IT IN A WAY THAT ALSO INCLUDES AN  
23 AGREEMENT THAT WE'RE NOT GOING TO AT TRIAL CONTEST ANYTHING  
24 HAVING TO DO WITH --

25 **THE COURT:** THAT UBER IS NOT GOING TO CONTEST.

1                   **MS. RIVERA:** CORRECT, YOUR HONOR.

2                   **THE COURT:** WITH YOUR OTHER HAT ON, ALTHOUGH THEY  
3 ABSOLUTELY ARE OPEN AND CAN CONTEST THAT THEY SHOULDN'T BE  
4 CHARGED WITH THAT POSSESSION.

5                   **MS. RIVERA:** ABSOLUTELY. AND I WOULD BE REMISS IF I  
6 DID NOT EMPHASIZE THAT WE ABSOLUTELY, IN FACT, INTEND TO DO  
7 THAT.

8                   **THE COURT:** AND THAT'S ABSOLUTELY PRESERVED AS IS  
9 MR. JUDAH'S OBJECTION THAT IT'S WORK PRODUCT. RIGHT?

10                  OKAY.

11                  **MS. ROBERTS:** THAT WORKS. THANK YOU, YOUR HONOR.

12                  **THE COURT:** YOU WON. CONGRATULATIONS.

13                  **MS. RIVERA:** THANK YOU, YOUR HONOR.

14                  **THE COURT:** ALL RIGHT. LET'S FIGURE OUT BRIEFING ON  
15 THE OTHER TWO MOTIONS. RIGHT? ONE FROM OTTO TRUCKING. A LOT  
16 OF TIME HAS PASSED, BUT, ANYWAY, YOU CAN BRING IT. AND THEN ONE  
17 FROM WAYMO. AND LET ME TELL YOU I'M UNAVAILABLE NOVEMBER 1ST,  
18 2ND AND 3RD. SO IF YOU WANT TO HAVE IT RESOLVED BEFORE THEN,  
19 I'M HAPPY TO DO THAT.

20                  I ACTUALLY THINK WE SHOULD SET A HEARING, BECAUSE IN  
21 PARTICULAR WITH WAYMO'S MOTION, AS I ALLUDED TO EARLIER. AND I  
22 WILL SAY THIS: JUDGE ALSUP CERTAINLY LEFT OPEN FOR WAYMO TO COME  
23 BACK.

24                  HE LEFT THAT OPEN IN HIS ORDER. AND AS I ALLUDED TO  
25 TO THE EXTENT -- I DON'T KNOW. I HAVEN'T RULED ON THIS -- THEY

1 ARE ALLOWED TO GET SOME SOURCE CODE, PROBABLY GOING TO HAVE TO  
2 GO BOTH WAYS.

3 IN OTHER WORDS, THIS IS A NEW ISSUE WHICH I  
4 PRESUME -- LET ME JUST ASK YOU THIS, MR. BAKER: I PRESUME THAT  
5 THIS SOURCE CODE, OR MR. NARDENILLI, IS ON THE NEW LIST OF TRADE  
6 SECRETS.

7 **MR. JAFFE:** MR. JAFFE, ACTUALLY.

8 **THE COURT:** OR MR. JAFFE. SORRY. NARDENILLI.

9 **MR. JAFFE:** HE WAS SITTING RIGHT NEXT TO ME. YES,  
10 YOU'RE CORRECT.

11 **THE COURT:** I JUST WANT TO MAKE SURE WE WEREN'T  
12 ARGUING ABOUT NOTHING. OKAY. ALL RIGHT. SO, ANYWAY, I THINK  
13 WE SHOULD HAVE A HEARING, BECAUSE IF -- I'M NOT SAYING I DON'T  
14 KNOW -- BUT SHOULD I ALLOW WAYMO TO DO SO, THEN THE DEFENDANTS  
15 WOULD PROBABLY WANT SOME DISCOVERY OF WAYMO, AS WELL. AND SO WE  
16 NEED TO GET THIS WRAPPED UP QUICKLY.

17 **MS. CHANG:** YOUR HONOR, IT MAY MAKE SENSE FOR JUDGE  
18 ALSUP TO DECIDE WAYMO'S MOTION TO AMEND, BECAUSE IF THAT MOTION  
19 TO AMEND IS DENIED AS TO THE SOFTWARE TRADE SECRETS, THEIR  
20 DISCOVERY MOTION FOR UBER'S SOURCE CODE IS MOOT.

21 **THE COURT:** I'M CERTAINLY GOING TO ASK HIM THAT. BUT  
22 HE MAY VERY WELL SAY, AS HE OFTEN DOES, HE WANTS ME TO DECIDE  
23 FIRST, AND I DON'T KNOW. THAT'S, OF COURSE, WHAT OCCURRED TO  
24 ME.

25 BUT IN THE MEANTIME, THOUGH, LET'S SEE WHETHER IT BE

1 THE 31ST OR THE 30TH, AS OUR HEARING DATE, AND THEN WE CAN WORK  
2 BACKWARDS WITH BRIEFING FROM THEM. DOES THAT MAKE SENSE?

3 **MR. JAFFE:** THAT WORKS FOR US.

4 **THE COURT:** SO THE 31ST IS HALLOWEEN, AND I DON'T  
5 KNOW IF ANYBODY HAS HALLOWEEN PARADES THEY HAVE TO GO TO. I TRY  
6 TO AVOID THAT, FOR THAT MATTER. BUT I HAVE CALENDAR AT 9:30.  
7 2:30? NO, 8:30. I THINK WE SHOULD DO 8:30. THERE'S NO PARADE  
8 AT 8:30. DOES THAT WORK? OR WE COULD DO THE 30TH AT 8:30, AS  
9 WELL.

10 **MS. CHANG:** WE WOULD PREFER A LATER DATE, BECAUSE WE  
11 HAVE A BUNCH OF RESPONSIVE BRIEFS TO FILE BY WEDNESDAY THE 25TH,  
12 SO MORE TIME WORKS FOR US.

13 **THE COURT:** THE 31ST, THEN. BUT I WANT TO DO IT BY  
14 THEN, BECAUSE THEN I'M GONE THE REST OF THE WEEK.

15 31ST AT 8:30 WILL BE THE HEARING DATE ON BOTH  
16 MOTIONS. OKAY. SO YOU FILED YOURS AND YOU FILED YOURS. SO  
17 WHEN DO YOU WANT TO FILE YOUR OPPOSITION?

18 **MS. CHANG:** FOR THE SOURCE CODE MOTION I WOULD ASK  
19 COULD WE DO IT FRIDAY, CLOSE OF BUSINESS? BECAUSE, LIKE I SAID  
20 BEFORE, WE HAVE AT LEAST SIX RESPONSIVE BRIEFS THAT WE HAVE TO  
21 FILE BY WEDNESDAY NOON.

22 **THE COURT:** YES, BUT AS I COUNT NOW I THINK YOU HAVE  
23 AT LEAST THREE LAW FIRMS REPRESENTING YOU. SO -- AND DON'T  
24 FORGET ME. RIGHT? I NEED TO HAVE TIME TO REVIEW, AS WELL.

25 HOW ABOUT THURSDAY, 11:59 P.M., BOTH SIDES?

1                   **MS. CHANG:** OKAY.

2                   **MR. BAKER:** THAT'S FINE WITH US, YOUR HONOR.

3                   **THE COURT:** OKAY. ALL RIGHT. TO THE EXTENT THERE'S  
4 ANY REPLY -- AND WHY DON'T I LET YOU DO A REPLY? IF I DON'T  
5 YOU'LL PROBABLY FILE ONE WITH THE REQUEST, ANYWAY. SO ANY REPLY  
6 BY 10:00 A.M. MONDAY. OH, YES. AND THEN, THE MOVING PARTY  
7 NEEDS TO PROVIDE ME THE BINDERS BY NOON THEN ON MONDAY.

8                   ACTUALLY, NOT THE REPLIES. CAN YOU PROVIDE, BECAUSE  
9 I'M ACTUALLY IN CLOSING ARGUMENTS FROM 11:00 A.M. PROBABLY UNTIL  
10 LIKE 4:00 P.M. ON MONDAY. SO GIVE ME THE BINDERS ON FRIDAY AND  
11 I CAN JUST ADD THE REPLIES IN ON MONDAY.

12                  SO THE MOVING PAPERS -- I HAVE MOVING SEPARATE. GIVE  
13 ME A BINDER WITH THE MOVING AND THE OPPOSITION, IF YOU COULD, BY  
14 NOON ON FRIDAY, BECAUSE THE OPPOSITIONS WILL HAVE BEEN FILED THE  
15 NIGHT BEFORE.

16                  **MS. CHANG:** AND, YOUR HONOR, IF YOU CONSULT WITH  
17 JUDGE ALSUP AND HE WANTS TO RULE ON THE MOTION TO AMEND FIRST  
18 YOU'LL ISSUE AN ORDER AND LET US KNOW?

19                  **THE COURT:** I WILL. I WILL SO THAT YOU'RE NOT DOING  
20 MAKEWORK.

21                  **MS. CHANG:** THANK YOU.

22                  **THE COURT:** GREAT. WELL, I FEAR OUR TIME MAY BE  
23 COMING TO AN END SLOWLY. OKAY. OR MAYBE I HOPE. NO, JUST  
24 KIDDING.

25                  ALL RIGHT. THANKS, EVERYBODY.

1                   **MR. JAFFE:** THANK YOU, YOUR HONOR.

2                   **MR. BAKER:** THANK YOU, YOUR HONOR.

3                   (THEREUPON, THIS HEARING WAS CONCLUDED.)

4                   STENOGRAPHY CERTIFICATION

5                   "I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
6 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER."

7                   OCTOBER 24, 2017

8                   KATHERINE WYATT

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